

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR PETITIONER

**IN THE
UNITED STATES CIRCUIT COURT OF APPEALS**

District of Columbia

*United States Court of Appeals
for the District of Columbia*

— o —
No. 9397

FILED APR 21 1947

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James H. Williams
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L. A. YOUNG SPRING & WIRE CORPORATION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

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— o —
**On Petition for Review of Order of the National Labor
Relations Board**

— o —
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L. A. YOUNG SPRING & WIRE CORPORATION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

**On Petition for Review of Order of the National Labor
Relations Board**

**BRIEF FOR L. A. YOUNG SPRING & WIRE
CORPORATION**

JURISDICTIONAL STATEMENT

This case comes before the Court upon the petition of L. A. Young Spring & Wire Corporation (App. 2-14) for the review of a decision and final order of the National Labor Relations Board (App. 36-52) issued against L. A. Young Spring & Wire Corporation, claimed by the Board to have been issued pursuant to Section (10)c of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U.S.C. 151, et seq.). This Court has jurisdiction under Section 10(f) of the Act.

STATEMENT OF CASE

On May 7 and 8, 1945, the Board conducted a hearing before a trial examiner in a proceeding initiated upon the petition of Chapter No. 155 of the Foremen's Association of America, hereinafter called the "Union", to determine whether the Union should be certified as the collective bargaining representative of the 20 foremen and 2 assistant foremen in petitioner's plant located at 3200 Slauson Ave., Los Angeles, California. At this hearing the Company moved to dismiss the petition for lack of jurisdiction on the grounds that its foremen and assistant foremen were not "employees" within the meaning of the National Labor Relations Act, and that to certify a collective bargaining representative for such foremen and assistant foremen would be an abuse of discretion by the Board (App. 52-53). Evidence was introduced establishing the duties and status of the foremen and assistant foremen and their and the Union's relationship to the rank and file and to the collective bargaining agent representing the rank and file employees in petitioner's plant, as follows:

Duties of Foremen and Assistant Foremen.

1. They act entirely in a supervisory nature, performing no manual labor (App. 57, 81).
2. They are in charge of their particular departments (App. 58).
3. They, in effect, do their own hiring of skilled employees (App. 88), and with respect to unskilled employees,

the mechanical job of hiring is done by the personnel director, based upon the foremen's request for additional men, subject to the approval of the plant superintendent, with whom his request is cleared, so that if there are men available in other departments, they might be transferred (App. 92, 137-145).

4. They are responsible for the production and operations of their departments (App. 66-68).

5. They have the right to promote within their departments (App. 58).

6. They have the right to make recommendations for promotions in other departments (App. 58).

7. They may, without approval of higher authority, discharge probationary employees (App. 58).

8. They may, for just cause and subject only to the terms of the Company's labor agreement, with the U.A.W.-C.I.O., the union representing the rank and file employees, discharge or otherwise discipline such employees, other than probationary employees, without approval of higher authority (App. 58).

9. They determine who shall be laid off and who shall be retained in their departments, subject only to the terms of the Company's agreement with the U.A.W.-C.I.O. (App. 96).

10. They represent the Company in their department in finally settling grievances of rank and file employees, subject only to the right of the U.A.W.-C.I.O., under its agreement with the Company to appeal the decision to a higher authority (App. 60, 105-107).

11. They represent the Company in initiating time studies on new operations, and standards are set based upon their ideas (App. 68).

12. They are solely responsible to see that hourly rate and piece rate employees meet the production standards (App. 68).

13. They are responsible for keeping their departments in safe working order (App. 69).

14. They attend regular weekly meetings, at which ideas are solicited from them in regard to policies and procedures, not only in their own departments but in other departments (App. 64).

15. They are managers of the particular departments in the same manner as the superintendent is the manager of all departments (App. 65).

16. They prepare daily efficiency reports for their departments and discuss them with the factory manager (App. 66).

17. They are responsible for the operation and cost and expenses of their particular departments, in the same manner that the general manager of the plant is responsible to the head office of the Company for the operation of the plant as a whole (App. 67, 68).

18. They rate employees (App. 108, 110) and grant raises to men in their departments, except to the extent limited by the War Labor Board (App. 125).

19. Mr. Logan, President of the Union testified with respect to his functions, duties and authority in his department, that "*I had complete control of that department*" (App. 105).

Status of Foremen and Assistant Foremen.

1. They received pay in 1944 ranging from \$4,007.04 for the lowest to \$6,161.51 for the highest (App. 77).

2. Each department at the plant is charged with the expense of that department, and the foremen in charge determine the number of people who shall be employed in the department on non-productive work, thus controlling the non-productive expenses in the department (App. 66, 67), and once each month the general manager of the plant goes over such expenses directly with the foremen (App. 67).

3. They may take time off from work for their own business, for illness, or other reasons, without being docked for it, in the same manner as may the general manager and factory manager of the plant (App. 61, 62), and salaried foremen are not docked for reporting to work late in their departments, although hourly rate foremen or assistant foremen are docked for reporting late (App. 60).

4. They present any grievances which they may have directly to the plant superintendent, and any requests for salary increases directly to the factory manager, who in turn makes recommendations to the plant manager, who sends the request on, with his recommendations, to the home office of the Company (App. 100, 101).

5. The policy of the Company has been to select its top executives, including superintendents, factory managers, and higher executives, from the ranks of its supervisory employees, and the top officials of the Company,

except for the comptroller, have risen from the ranks of workmen up through the supervisory staff to their present positions (App. 78, 79).

Relation of Foremen and Assistant Foremen to Rank and File Union.

1. The approximately 275 production employees whom the foremen and assistant foremen supervise are represented, for collective bargaining purposes, by a local union of the U.A.W.-C.I.O., with whom the Company has had collective bargaining agreements since 1939 (App. 58-60).

2. In negotiating collective bargaining agreements between the Company and the C.I.O. union, the foremen and assistant foremen are consulted as to what they would like to have the general manager get into the contract, and suggestions are solicited from them as to what should be done in connection with the contract (App. 71, 72).

3. Under the contract between the Company and the C.I.O. union, the foremen and assistant foremen act for the Company in settling grievances with the U.A.W.-C.I.O. (App. 60), and their decisions on grievances and on matters of discipline, even to discharge, are final, subject only to the right of the C.I.O. to appeal to higher authority (App. 58-60, 105-107). Mr. Logan, the President of the Union, stated that, in his capacity as foreman, he had handled grievances on behalf of the Company with the Union on many occasions (App. 112).

4. The Union first began to organize the Company's plant about the first or second of January, 1945 (App. 103).

5. Warren B. Logan, President of Chapter 155 of the Foremen's Association of America (App. 102), talked to some of the leaders of the U.A.W.-C.I.O. union of the plant about the plans for the organization but, according to Mr. Logan, "not too deeply" (App. 113). When Mr. Logan told the local union of the U.A.W.-C.I.O. of their organization plans before filing the petition for certification in this case, the U.A.W.-C.I.O. advised Mr. Logan that they were in sympathy with the foremen's plans (App. 113), and the publication of the local U.A.W.-C.I.O. union, known as the "Union Clipper," welcomed the organization of the foremen's union (App. 113).

6. Mr. Logan testified that if there was a strike of the production and maintenance workers belonging to the local union of the U.A.W.-C.I.O. in the plant, that he would not attempt to fill the strikers' jobs with other men (App. 117); that he could not say whether or not, in the case of a strike by the U.A.W.-C.I.O., he would cross the union picket line (App. 114, 115), and that he would in any event comply "in all respects" with the national constitution of the Foremen's Association of America, and the rules and regulations of the national association, as laid down in its headquarters in Detroit (App. 118, 119).

On January 8, 1946, the Board issued a two-to-one decision, Member Reilly dissenting, denying petitioner's motion to dismiss the representation proceeding and directing an election to determine the exclusive bargaining representative for the foremen and assistant foremen (App. 3). Pursuant to the decision and direction of election, an election was conducted on February 1, 1946, which resulted in the Foremen's Association of America being selected by the foremen and assistant foremen as their exclusive bargaining representative, and on February 13, 1946, the Board

certified Chapter No. 155 of the Foremen's Association of America as such exclusive bargaining representative (App. 3). On February 27, 1946, the Union by letter requested a conference for the purpose of negotiating a collective bargaining contract (App. 216). On March 5, 1946, petitioner refused the request on the ground that the Board had improperly certified the Union as a collective bargaining representative (App. 217). On March 12, 1946, the Union filed charges with the Board, alleging, in substance, that petitioner's refusal to bargain constituted an unfair labor practice under Section 8(5) and (1) of the Act (App. 4), following which the Board filed a complaint against petitioner under Section 10 of the Act (App. 4), and on May 15, 1946, a hearing was conducted pursuant to Section 10 of the Act before a trial examiner for the Board. At this hearing testimony was presented by petitioner and the following additional evidence was introduced with regard to the relationship of the foremen and assistant foremen and the Union to the rank and file employees and the Union representing such employees:

1. On April 17, 1946, Chapter 809 of the U.A.W.-C.I.O. called a strike of the hourly rate employees at the plant of the Company. The foremen and assistant foremen did not report for work on April 18, 1946, and, on that day, individual telegrams were dispatched by the Company to each of the foremen and assistant foremen, requesting them to return to work on the morning of April 19, 1946 (App. 149-151, 218). Although advised by the Company that they had a legal right to enter the plant (App. 151, 218), no foreman or assistant foreman had returned to work in response to the telegrams up to the time of the hearing on May 15, 1946 (App. 149, 151), nor did any foreman go into the plant to determine whether or not the plant facilities and equipment were being protected

(App. 156). The foremen and assistant foremen congregated across the road from the entrance to the plant on April 19, 1946, the day they had been requested to return to work, where they conversed with the pickets of the C.I.O. Union (App. 156).

2. Mr. Logan knew, a week before the strike, that the C.I.O. union was going to strike and at that time he conferred with representatives of the C.I.O. union about the strike (App. 154). While the strike was in progress, Mr. Logan and other representatives of the Union held conferences with the President and other representatives of the C.I.O. union (App. 158). While the strike was in progress, Mr. Logan, the President of the Union, conferred with Mr. Kahn, the National Representative of the U.A.W.-C.I.O., directing the strike activities at the plant, and Mr. Logan accompanied Mr. Kahn while Mr. Kahn attempted to telephone Mr. Vallance, the Vice President of the Foremen's Association of America, at the national offices of the Foremen's Association in Detroit, Michigan (App. 168-170).

3. Mr. Logan, the President of the Union, stated that the action of the foremen and assistant foremen in stopping work and refusing to return to work or to cross the picket line of the C.I.O. union was because of instructions contained in a statement of policy issued by the national office of the Foremen's Association of America, which provides in part:

"E.—Should the striking union for any reason fail to provide adequate maintenance and protective workers from its membership to maintain and protect property and equipment, members of the Foremen's Association in the Plant at the time the strike starts shall perform such work as may be necessary to protect such property and equipment from damage. The duly authorized representatives of the Chapter

representing the supervisory employees involved shall immediately notify representatives of the company and of the striking union of this condition. Upon failure to provide such maintenance and protective workers promptly the members of the Foremen's Association shall cease to perform such work unless it be mutually agreed by all parties to do otherwise.

"F.—Should the striking union agree that all supervisory employees may enter the plant, and the company requires only part of them to enter, the duly authorized representatives of the Chapter shall immediately contact the representatives of the company to determine whether or not the company intends to compensate those not permitted to enter the plant for any time they may lose during the strike. If the company should refuse to agree to compensate those supervisory employees not permitted to enter the plant the members of the Foremen's Association should not enter the plant" (App. 170, 220-222).

The usual proceedings were had pursuant to Section 10 of the Act and a hearing was held before the Board at Washington, D.C., on July 16, 1946, at which hearing petitioner renewed its motion to dismiss the proceedings for the reasons previously advanced at the representation hearing (App. 34-36). On August 26, 1946, the Board issued a two-to-one decision, wherein it denied petitioner's motion to dismiss the proceedings, found that petitioner, by refusing to bargain collectively with the Union, had violated Section 8(5) and (1) of the Act, and ordered petitioner to cease and desist from the unfair labor practices found and to post appropriate notices of compliance (App. 36-52).

THE STATUTE INVOLVED

The decision in this case involves the construction and application of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U.S.C. 151 et seq.), hereinafter called "the Act", and particularly the following provisions:

"Section 2. When used in this Act * * * (2) The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, * * * (3) The term 'employee' shall include any employee, * * * (5) The term 'labor organization' means any organization * * * in which employees participate and which exists for the purpose * * * of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

"Section 7. Employees shall have the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"Section 8. It shall be an unfair labor practice for an employer—(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7. * * * (5) To refuse to bargain collectively with the representatives of his employees subject to the provisions of Section 9(a).

"Section 9. (a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees * * * (b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the Unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof."

STATEMENT OF POINTS

1. The Foremen and Assistant Foremen herein involved are not "employees" within the meaning of the National Labor Relations Act as interpreted by the United States Supreme Court in *Packard Motor Car Co. v. N.L.R.B.*, ... U.S., 91 L.E. 697 (1947).

2. The Board abused its discretion in determining that the foreman and assistant foreman herein involved constitute an appropriate unit for collective bargaining.

SUMMARY OF ARGUMENT

1. Section 2(2) of the Act defines "employer" as including "any person acting in the interest of an employer, directly or indirectly, * * *" Section 2(3) of the Act defines "employee" as including "any employee."

A majority of the Board in this case have supported their decision by quoting with approval from the case of *N.L.R.B. v. Skinner & Kennedy Stationery Company*, 113 F. (2d) 667, 671 (C.C.A. 8) to the effect that:

"A foreman, in his relation to his employer is an employee, while in his relation to the laborers under him, he is the representative of the employer and within the definition of Section 2(2) of the Act" (App. 41).

In reaching its decision the Board has obviously been influenced by the mere use of the term "foreman." It is our position that the majority of the Board in this case have ignored a judicial approach to the problem and simply "beg the question" in adopting the statement in the *Skinner & Kennedy* case, *supra*, as the grounds of decision. There is no merit in this reasoning as a means of determining the Congressional intent in using the terms "employer" and "employee" in the Act.

We believe that a critical examination of the Act, in the light of its purposes, the context in which the language is used and the Supreme Court decision in the *Packard* case, will lead inevitably to the conclusion that it was never the intention of Congress to include foremen and assistant foremen such as those in this case within the meaning of the term "employee" as used in the Act.

2. Assuming, however, that the foreman and assistant foreman in the instant case are "employees" within the meaning of the Act, Section 9(b) requires the Board to determine whether selection of the Union would effectuate the policies of the Act, *Packard Motor Car Company v. N.L.R.B.*, ... U.S., 91 L.E. 697 (1947), *N.L.R.B. v. Jones & Laughlin Steel Corporation*, 146 F. (2d) 718, enforcement redened, 154 F. (2d) 932 (C.C.A. 6), and *N.L.R.B. v. E.C. Atkins & Company*, 147 F. (2d) 730, (C.C.A. 7).

The correctness of the Circuit Courts of Appeals decisions in the foregoing cases was affirmed by the Supreme Court when it remanded the latter two cases after granting certiorari, for the Circuit Courts' further consideration due to changed circumstances brought to the highest court's attention while the cases were pending, *N.L.R.B. v. Jones & Laughlin Steel Corporation* and *N.L.R.B. v. E.C. Atkins & Company*, 325 U.S. 838.

It is petitioner's position that the Board went clearly beyond the limits of its discretion in determining that selection of the Union as bargaining representative for the foreman and assistant foreman here involved would effectuate the policies of the Act and that its orders are therefore invalid as a matter of law. *N.L.R.B. v. Jones & Laughlin Steel Corporation*, supra; *Packard Motor Car Company v. N.L.R.B.*, supra; *N.L.R.B. v. E.C. Atkins & Company*, supra; *Pittsburgh Plate Glass Company v. N.L.R.B.*, 113 F. (2d) 698, 701 (C.C.A. 8); *Midland Steel Products Company v. N.L.R.B.*, 113 F. (2d) 800, 805 (C.C.A. 6).

ARGUMENT

I. The Foremen and Assistant Foremen Herein Involved Are Not Employees Within The Meaning Of The National Labor Relations Act As Interpreted By The United States Supreme Court In *Packard Motor Car Company v. N.L.R.B.*

A. *Background of Foremen's Unionization and Decisions Under the Act.*

No substantial problem regarding unionization of foremen arose until 1942, when the Board, in two-to-one decisions, decided that supervisors were "employees" under the Act. *Union Collieries Coal Co., (Oakmont, Pa.) & Mine Officials Union of America-Independent*. 41 N.L.R.B. 961 and 44 N.L.R.B. 165.

The Foremen's Association of America then started an organizational drive which, in the spring of 1943, interfered so seriously with war production that the House of Representatives held hearings on H.R. 2239, 78th Congress, First Session, which proposed to remove any doubt that Congress did not intend that such persons be considered "employees" under the Act. While the hearings were under way, the Board made legislation unnecessary by dismissing a petition for certification filed by supervisory employees and by specifically overruling the *Union Collieries* case, *supra*, and *Godchaux Sugars, Inc. and United Sugar Workers, C.I.O.*, 44 N.L.R.B. 874. The Board held that certification of supervisory employees was reserved to

its administrative discretion. The Board stated, in the case of *In Re Maryland Drydock Co.*, 49 N.L.R.B. 733, that:

*"The very nature of a foreman's duties make him an instrumentality of management in dealing with labor—to hold that the (Act) contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests. * * * (Italics supplied).*

On March 26, 1945, the Board observed that "important developments" since the *Maryland Drydock* decision required a "reconsideration of the entire problem." *In Re Packard Motor Car Co.*, (Detroit, Michigan) and *Foremen's Association of America*, 61 N.L.R.B. 4.

The Board produced as reasons for its decision that the modern supervisory is "more the 'traffic cop' of industry than the independent foreman of the 1900's"; that a foreman, such as those in the Packard case "is given ready-made policies to execute, and he is also given a standard practice to observe in executing them"; that "the foreman has no authority to make decisions or take action on such matters as the discharge, transfer, lay-off, or reclassification of the employees under his supervision"; that with respect to collective bargaining concerning grievances "the personnel department handles the grievances of subordinate employees beyond the first stage and retains ultimate control in any event."

The inescapable inference from the reasoning and language of the Board in the *Packard* cases was that, if foremen had authority "to make decisions or take action on such matters as the discharge, transfer, lay-off, or reclassification of the employees under his supervision", and cor-

responded to the "independent foremen of the 1900's", then a different conclusion would be reached, but such was not the case, as may be seen from the decision in the representation case involving the Company (App. 194). The Board found in its decision in this case that "Each foreman is in complete charge of the operations of a department; * * * has the power to discharge probationary employees in his department outright, to discipline or discharge regular subordinates subject to the provisions of the collective bargaining contract covering rank and file workers and to promote employees to better jobs within his department * * *"; that each foreman "regularly rates his subordinates * * *; represents the company in the initial stage of the grievance procedure * * *; attends weekly foremen's meetings at which production problems are discussed; * * * participates in monthly safety forums, is responsible for safety procedures in his department, initiates time studies on new operations and is consulted before production standards are finally set * * *"; and concluded that "the foremen here involved have greater discretion, authority and responsibility than the foremen who were the subject of the proceeding in the *Packard* case" (App. 198). Notwithstanding that in every particular the foremen and assistant foremen in the instant case corresponded to the criteria laid down by the Board in the *Packard* case, the Board observed that in the short interval of approximately ten months between its decision in the *Packard* case on March 26, 1945, and the decision in the instant case on January 8, 1946, its reasoning in the *Packard* case had become obsolete, by stating:

"The Board has in the Maryland Drydock and following cases construed Section 9(b) as conferring upon it administrative discretion * * * to decide that some employees may not constitute an appropriate unit in any circumstance. We are now persuaded that this

interpretation is unjustified and should not govern future Board rulings. * * * Under the power to define the unit, the Board may properly insist that foremen be organized in bargaining units apart from their subordinates but it cannot ostracize them. In this view the kind of industry in which foremen are employed is immaterial and the duties and responsibilities of foremen are relevant only insofar as they bear on the question of proper grouping for collective bargaining purposes" (App. 201).

The full extent of the Board's vacillation is apparent as we examine its position in the *Maryland Drydock* case, where it said:

"The very nature of a foreman's duties make him an instrumentality of management in dealing with labor
* * *

and its position in the second *Packard* case, where it said:

"Fundamental policies of the Act may sometimes require the Board to decline, despite the danger of strikes, to make its machinery available to effectuate every choice that employees may make";

and its position in the representation case involving the Company, where it stated:

"We are concerned with an unaffiliated labor organization which admits only supervisory employees into membership."

and its position in the case of *In Re Jones & Laughlin Steel Corporation, Vesta-Shannonin Coal Division* (Pittsburgh, Pa.) and *United Clerical, Technical & Supervisory Employees Union of the Mining Industry, Division of District 50, United Mine Workers of America*, 66 N.L.R.B. No. 51, wherein the Board held that foremen could be represented for collective bargaining purposes by a union which was an affiliate of a labor organization representing the production employees in the employer's plant.

This vacillation of the Board was commented upon by the Supreme Court in the *Packard* case, *supra*, in the following terms:

"If we were obliged to depend upon administrative interpretation for light in finding the meaning of the statute, the inconsistency of the Board's decisions would leave us in the dark."

No real solution to the difficult problem presented to this court can be reached until meaningless terms are cast aside and fundamental facts examined. The Board's vacillation may, in part, be explained by the fact that it has been confused by the term "foreman." In its efforts to clarify the "Foreman's" situation, the Board adopted the equally meaningless term "policy-making functions." See, e.g. *In Re Jones & Laughlin Steel Corporation, Vesta-Shannonin Coal Division (Pittsburgh, Pa.) and United Clerical, Technical & Supervisory Employees Union of the Mining Industry, Division of District 50, United Mine Workers of America*, *supra*. The error in saying in one case that certain personnel called "foremen" are covered by the Act because "foremen" in another case were held to be so covered, may be more concretely demonstrated. There is nothing sacred in the scope or application of the term "foremen"; it may be applied, legally enough, to vice presidents or presidents of corporations. It would be absurd to then argue that the top executives of a corporation are covered by the act as "Foremen." The Supreme Court exploded this argument when it said in the *Packard* case, *supra*, footnote 2:

"If a union of vice presidents, presidents or others of like relationship to a corporation comes here claiming rights under this Act, it will be time enough then to point out the obvious and relevant differences between the 1100 foremen of this company and corporate officers elected by the Board of Directors."

The Supreme Court, then, has recognized that a line must be drawn somewhere in the broad classification of "employees", dividing those within from those outside the scope of the Act. This line is drawn, not by the application of meaningless terms, but by examination of fundamental facts, that is, by examination of the duties and functions of the personnel concerned.

Such an examination must reveal that the Supreme Court's decision in the *Packard* case cannot be authority for holding that the Act applies in this case. There the Supreme Court was concerned with a Board decision which by inescapable inferences, as pointed out *supra*, indicated that if foremen had broader powers which placed them higher in the managerial hierarchy, then the Act would not apply. The powers of the "foremen" herein concerned have been set forth in our "Statement of Case", *supra*; the powers of the "foremen" in the *Packard* case were listed by the Supreme Court as follows:

"The function of these foremen in general is typical of the duties of foremen in mass production industry generally. Foremen carry the responsibility for maintaining quantity and quality of production, subject, of course, to the overall control and supervision of the management. Hiring is done by the labor relations department, as is the discharging and laying off of employees. But the foremen are provided with forms and with detailed lists of penalties to be applied in cases of violations of discipline, and initiate recommendations for promotion, demotion and discipline. All such recommendations are subject to the reviewing procedure concerning grievances provided in the collectively-bargained agreement between the Company and the rank and file union" (Italics supplied).

The differences in the powers of the "foremen" in the *Packard* case and those of the "foremen" herein involved

are too obvious to further belabor. This fundamental fact is apparent—the personnel here concerned are further up the ladder of managerial authority than those concerned in the *Packard* case. Where the line of the Act's application is to be drawn must ultimately rest on policy considerations and on a determination of the intent of Congress. This must be so; because on no other grounds could top executives of corporations be excluded from the Act as the Supreme Court indicated it would so do in the *Packard* case.

While the Supreme Court indicated in the *Packard* case that policy considerations had little weight in its decision, it must be remembered that the same considerations had great weight with the four dissenting Justices; and more important, as pointed out above, the *Packard* case presented fundamental facts clearly distinguishable from those present here. The following considerations loom even larger in importance when it is remembered that the "foremen" here concerned enjoy power unique in industry. (We urge the term "unique" advisedly because the Supreme Court in the *Packard* case pointed out that the powers of foremen therein involved were "typical of the duties of foremen in mass production industry generally." If those powers were typical then it must follow that the powers enjoyed by the foremen in this case are indeed unique.)

It should not be necessary here to go into detail concerning the responsibilities of the foremen herein involved and of the great reliance the Company has demonstrated in placing its present and future success in the hands of its foremen. The record furnishes abundant proof of this.

Employers, from bitter experience, as evidenced by this record, recognize that the mere fact that when foremen

such as those here join a union is frank admission of their lack of fidelity to management. Despite the Board's contention to the contrary, the actualities are, as evidenced by the record in this case, that such representatives once unionized cease to show allegiance to management in discharging their responsibilities. If further evidence be required, the following occurrence indicates the typical effect unionization has upon the personnel occupying a position of confidence. Nash-Kelvinator plant protection personnel recently unionized. After this event had taken place, rank and file employees assaulted one of their foremen, literally hurled him out of the plant and kicked him down the street. The plant protection personnel, observing this, stood by doing nothing in gross dereliction of their duty and did not even report the affair to the company!

In *Wadsworth v. Adams*, 138 U.S. 380, the Court said:

"The law requires the strictest good faith upon the part of one occupying a relation of confidence to another."

It is not wrong doing, but the possibility of wrong doing that calls the rule into operation. As stated in *Michoud v. Girod*, 45 U.S. 503, 555:

"It acts not on the possibility that in some cases the sense of that duty may prevail over the motive of self-interest, but it provides against the probability *in many cases and danger in all cases* that the dictates of self-interest will exercise a dominate influence and supersede that of duty."

The Supreme Court in the *Packard* case found, in effect, that the foremen therein involved would not hold such a place of confidence as to call for the operation of the rule. As pointed out above, fundamental differences exist be-

tween the powers herein concerned and those exercised by the foremen in the *Packard* case. The *Packard* case decision held that certain positions with certain attendant powers were within the scope of the Act; it does not attempt to draw the line for positions above those concerned in that case. It is our contention that this case presents the situation where the line must be drawn. If the rule requiring good faith upon the part of a confidential employee is to have any effectiveness, then some places along the ladder of managerial authority it must be called into operation. Where the success of the Company rests so largely with certain personnel and where so much confidence and reliance is placed in them, as the record in this case demonstrates, then the rule of strictest good faith must be applied if it is to receive anything more than lip-service.

It is true that the Supreme Court refused to look to the legislative history of the Act in the *Packard* case, because there was "no ambiguity in this Act to be clarified." But the United States Supreme Court has held the term "employee" not to be a "word of art having a definite meaning" (*N.L.R.B. v. Hearst Publications, Inc. et al*, 322 U.S. 111), furthermore, it indicated in the *Packard* case that some employees are not covered by the Act. Since this case is distinguishable upon the facts of the *Packard* case we do well to look to Congressional declarations in order to assist drawing the line in the instant case. The very necessity for drawing the line as to personnel covered by the Act indicates that as to some factual situations the Act is ambiguous. As to the facts present in the *Packard* case no ambiguity existed; but as additional powers are found in the present case which change the complexion of the fundamental grounds upon which this decision must be reached, it is apparent that an ambiguity does exist.

B. The Definitions in the Statute.

In Section 1 of the National Labor Relations Act, Congress set forth its policy in adopting the Act as being one of "encouraging the practice and procedure of collective bargaining." While Congress did not deem it necessary to define "collective bargaining", it obviously contemplated that there be two parties to engage in the "collective bargaining", employers and employees, and in Section 2, Congress undertook to define the two parties. In Section 2(2), Congress defined employer as "any person acting in the interest of an employer, directly or indirectly, * * *" and in Section 2(3) stated that the "term 'employee' include any employee." The Board in its decision has refused to credit Congress with any purpose in thus separately defining those who sit with management in the "practice and procedure of collective bargaining" on the same side and those who are on the other side of the table—the "workers" the Act was designated to benefit. There is but one logical conclusion that can be drawn, if we are to give meaning to the separate definitions, and that is that Congress intended to include within the definitions of "employer" *all those persons who act for the employer in "the practice and procedure of collective bargaining" with the "employees."* It likewise seems quite clear that Congress intended to exclude from the definition of "employee" all "employers."

The Board has adopted a literal definition of the term "employee" that goes beyond the *Packard* decision and includes supervisory personnel who completely and definitely act "in the interest of" the employer in the practice and procedure of "collective bargaining" and are therefore clearly in the "employer" designation rather than the

"employee" classification under the Act as construed by the Courts. If any purpose is to be given to Congress' placing separate definitions in the Act, then this court must determine if the personnel here concerned, higher up the managerial ladder, fall in one or the other classification.

Where the term itself is not defined, resort must be had to other words of limitation in the Act which modify it.

"The meaning of particular terms in the statute may be ascertained by reference to words associated with them in the statute." *Virginia v. Tennessee*, 148 U.S. 503.

In Section 1 of the Act, wherein Congress states further its findings and policy in enacting the Act, Congress states that its policy was to encourage "the practice and procedure of collective bargaining * * * by protecting the exercise by *workers* in full freedom of association, self-organization, and designation of representatives of their own choosing * * *" Webster's International Dictionary defines "worker" as "Laborer; a toiler." Can there be any doubt that the "worker, for whose benefit Congress stated it was enacting the Act, are the "employees" Congress thereafter refers to in the Act, and this being so, what basis is there for concluding that the foremen and assistant foremen with their attendant powers in the instant case were "employees" or "workers" within the contemplation of Congress in enacting the legislation?

C. The Legislative History of the Act and the Committee Reports Indicate Congress Had No Intention to Include Such Personnel as Herein Concerned Within the Term "Employees".

Legislative history may be considered to determine the intent of Congress.

N.L.R.B. v. Hearst Publications, supra;

N.L.R.B. v. Pennsylvania Greyhound Lines, 303 U.S. 261.

The remarks of Senator Wagner in the Congressional discussions of the Act conclusively indicate that Congress was discussing means "designed to protect the laborer" (Congressional Record, 1935, Vol. 79, Page 7847). Senator Wagner stated:

"The bill intends merely that these agencies assigned to represent the *workers* for the purposes of collective bargaining shall be free from the domination or even the interference of the other party" (p. 7570).

"* * * We have cherished always the ideal of the employers and *workers* meeting together. * * * The central idea of all these efforts has been to promote the making of collective agreements between employers and *workers* * * *." (p. 7854)

and at Page 7855, Senator Wagner said:

"* * * An upright, impartial, and peaceful forum to industry and labor will benefit employers, *workers*, and the country at large."

Senator Tydings, at page 7954, speaks of "workingmen", and Senator Borah, at page 7955, speaks of "A very large body of working-men."

During the debate upon Section 8 of the Act there were numerous proposals that the provision, which reads "It shall be unfair labor practice for an employer" to engage in certain unfair labor practices, should be amended to substitute "any person" for "employer." In the debate upon this measure, Senator Barkley, a leading proponent of the Act, clearly indicated Congress' understanding of the distinction between "employer" and "employee" as used in the Act by saying:

"It might be possible for an employee to persuade a fellow employee that he ought to belong to one union or the other, but I cannot understand how a man who is working for wages can go to a man working for the same employer, or for a different employer and intimidate or coerce the other employee to join or not to join a particular union, because neither one of them can fire the other from his job."

Certainly Senator Barkley understood that persons such as the foremen and assistant foremen with their attendant powers in the instant case, possessing the power to fire "employees", were not themselves "employees" under the Act.

Furthermore, with reference to this proposal to make it an unfair labor practice for "anyone" instead of only the "employer" to engage in the activities prohibited by Section 8 of the Act, the House of Representatives Report said as follows:

"It is contended that the bill should prohibit 'anyone', including, of course, an employee or labor organization, from interfering with, restraining or coercing employees in the exercise of these rights, and that without such provision the bill is 'unfair', 'one-sided' and would lead to the domination of industry by organized labor. But it is clear that corresponding to

the right of employees to be free from interference, etc. by their employer in their organization activities, is the right of the other party to the negotiations, the employer, to be free in his designation of representatives for that purpose. * * * Such a reciprocal provision, forbidding employees to interfere with the right of employers to choose their representatives for collective bargaining, would be a merely formal requirement ignoring the realities of the situation. In the light of common knowledge, it can hardly be said that this right of employers need protection under this bill." (H.R. Report, No. 1147, June 10, 1935, 74th Cong. 1st Sess.)

Examination of the Board's decisions indicates how far it has departed from the intendment of Congress. This case is the culmination of the Board's redefinition of terms of limitation, and substitution of its own viewpoints for those of Congress. How can it be said that the company is "free from interference" in choosing its "representatives for collective bargaining" when, by the undisputed facts on this record, the foremen and assistant foremen chosen by the company as its "representatives for collective bargaining" are so beholden to the employees with whom they are under a duty to bargain on behalf of the company that they join with those employees in a strike against the company, not to directly establish immediate demands of their own, but in support of the employees' demands, and even refuse to come on the company's premises when requested. If this is not the kind of interference against which Congress in the light of "common knowledge" thought the employers required no protection, then it is impossible to conceive of such interference. The conclusion must be that Congress considered the distinction it had made in the Act between the "employer", embracing all those "acting in the interest of an employer, directly or indirectly" and acting for the employer in "collective bar--

gaining," on the one side and on the other the laborers, the "employees" with whom they bargain, to be so clear and undisputed that no question would be raised concerning it. Unfortunately for industry, labor and the Nation, the Board in its decision has seen fit to ignore the obvious intention of Congress.

D. The Construction Placed Upon the Act Would Lead to Unreasonable and Intolerable Results which Congress Could Not Have Intended.

(a) Divided Loyalty.

The personnel herein concerned act for and as representatives of the Company and their loyalty must be to the Company. The unionization of these foremen has resulted in a complete destruction of their loyalty, as the record in this case so clearly attests. The foreman's duty to his employer lies in one direction and his union interests and the pressure of the union group pull him in an opposite direction.

In view of the record in this case, how can the Company rely, or be expected to rely, upon decisions or recommendations of its foremen in the important matters under their control? To be more specific, if the mere fact of unionization causes foremen to desert their employer and ally themselves with rank and file employees in a strike of the rank and file involving no demands of the foremen, what reasonable basis is there to expect that they will protect their employer's interest in making decisions involving rank and file employees in regard to hiring, discharges, transfers, layoffs, demotions, discipline, the meeting of production standards, and setting of standards on

particular operations, the settlement of grievances and the countless other matters in which it is their duty to act in their employer's interest? The Company can never be certain whether the decisions of its foremen are moved by a desire to faithfully serve the Company or to secure the allegiance of the rank and file, so that it will be available to aid them in attaining their own ends.

Nor can the Company be certain even in those cases where it knows that the foreman is not swayed by selfish motives. Anyone familiar with labor unions knows that members are disciplined for any action deemed contrary to union policies; the fear of such disciplinary action has always been a powerful deterrent to any activity other than that intended to benefit labor, often at the expense of management. The record in this case incontrovertibly proves that unionized foremen will follow the latter course.

The Board would answer these arguments, as it did in its decision in the representation case, with the statement that:

"The argument in favor of dismissing the petition would have weight only if by so doing the Board could also forbid foremen to unionize."

This answer of the Board is less than no argument at all; it ignores the fundamental facts distinguishing this case from the *Packard case*.

It should be here emphasized that the Company is not seeking to deny foremen the right to organize and to bargain collectively. The Company is asking that the Board be denied the power to legalize faithlessness of management's representatives. The Company asks only that the court consider whether in the light of this record and common experience any fair-minded person can believe that Congress intended in passing the Act to produce such an

intolerable result. The only adequate remedy of the Company is one of severing the relationship of responsible personnel, who, by their words and acts, proclaim that they will be faithless to their trust. This remedy is denied the Company under the Board's construction of the Act. Congress could never have intended such a result.

(b) Seniority Would Control Advancement.

A cardinal principle of unionism and of the Foremen's Association of America is seniority.

On the matter of seniority, the Panel of the National War Labor Board said:

"In particular, the Panel believes that it would be unfortunate for a government agency to require managements to adhere to a straight seniority rule in making layoffs, demotions and transfers of foremen. Certainly the principle of rewarding merit and ability requires no apology. This is especially true in the case of executives such as foremen. The efficiency of each foreman determines in substantial measure the efficiency of many men under him and, in some instances, the efficiency of cooperating departments. It may also determine in large measure whether the relations between the company and a rank and file union are harmonious or full of friction and difficulties. Consequently, both the public and the rank and file workers have a strong interest that the positions of foremen be filled by the most capable men available, regardless of their length of service.

"The Panel believes that great weight should be attached to the dependence of higher management on the competency of foremen. When the managers of an enterprise select foremen to whom they delegate authority and responsibility they are not relieved of accountability for results. They are expected to pick

competent men on whose good judgment and reliability the superior can depend. The Panel calls attention to the fact that foremanships are to considerable extent the seed bed for higher management. Furthermore the men who hold high positions in management are chosen in part for their skill in selecting and developing subordinates into an effective organization. They should be free within broad and reasonable limits to exercise these functions and to select and develop men for greater responsibilities. To require management to follow straight seniority in making lay-offs would seriously restrict the use of foremanships as a developing ground for higher management. It would create serious staff problems of efficiency and morale. For these several reasons the Panel concludes that, while seniority should be given weight, management must be left to determine for itself the appropriate weight to be assigned to merit, ability and seniority in laying off, demoting, or transferring supervisory employees.

* * *

The company has the ultimate responsibility for the success or failure of the business. In carrying out that responsibility the company is constantly on the alert for the most efficient supervisory employees that it can find. If the company is required to bargain collectively with its supervisory employees, it will inevitably be forced, as has been the case in all mass production industries where rank and file employees are unionized, to comply with the demands of the supervisory employees that seniority control advancement. When this occurs management loses the uncontrolled right to choose managers for their ability. No reasonable person can for a moment consider that Congress intended to set up in the management function a system whereby the decisions or principles of a third party control promotion, demotion, transfer and discharge of an essential supervisory staff enjoying powers above and beyond those held typically by "foremen in general."

E. The Board Has Failed To Analyze the Act.

We believe that we have clearly established that the majority of the Board in this case completely failed to carefully analyze the Act with view to determining Congress' intent. By their construction of the Act in this case a majority of the Board have closed their eyes to the fact that their constructions defeat "the practice and procedure of collective bargaining" which the Act was designed to encourage; ignores the mutually exclusive definitions of "employer" and "employee", which the Supreme Court in the *Packard* case definitely recognized; ignores the legislative history of the Act; legalizes faithlessness in a manner utterly inconsistent with the most vital principles of our common law; and permits intolerable results of divided loyalties and seniority as the control of advancement.

II. The Board Abused Its Discretion In Determining That The Foremen Assistant Foremen In The Instant Case Constitute An Appropriate Unit For Collective Bargaining.

Section 9(b) of the Act reads as follows:

"(b) The Board shall decide in each case whether in order to insure the employees the full benefit of their right to self-organization and to collective bargaining, *and otherwise to effectuate the policies of this Act*, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof."

Until the decision in this case, the Board had uniformly held that Section 9(b) of the Act conferred discretion upon

it to decide that "some 'employees' may not constitute an appropriate unit in any circumstance" (App. 201). However, in this case, the Board decided that, having determined that the foremen were "employees", it had no power under the Act except to determine "whether the appropriate unit for collective bargaining purposes shall be 'employer unit, craft unit, plant unit or subdivision thereof'" (App. 201).

In the *Jones & Laughlin* case, the Sixth Circuit Court of Appeals held that while the Board may have properly determined that plant guards were "employees" under the Act, "nevertheless the Board could not stop with its finding upon the facts that plant protection employees are entitled to the benefits of collective bargaining. It is required under Section 9(b) to determine whether the unit or units selected for that purpose would effectuate the policies of Section 151-166 of this Title * * *."

"The Board, under Section 9(b), had a positive duty to perform in the interests of the public."

The Court denied enforcement of the Board's order on the ground that the Board had abused its discretion in certifying a collective bargaining representative for the plant guards, saying with respect to such plant guards, that:

*"When they were inducted into the unions and became subject to their orders, rules and decisions, the plant protection employees assumed obligations to the unions and their fellow workers, which might well in given circumstances bring them in conflict with their obligations to their employers * * *" (Italics supplied).*

The Court concluded:

"We think that the imposition of such strains upon personal allegiance and personal interest would un-

doubtedly be detrimental to the public interest and to the free flow of commerce."

In the *Atkins & Company* case, the Seventh Circuit Court of Appeals was likewise called upon by the Board to enforce its order that the employer bargain with a collective bargaining representative of the Company's plant guards. The Court in that case discussed in detail the relationship of the plant guards in their militarized status and concluded that they were not "employees" of the respondent company under the Act. The Court further stated:

"The purposes and policy of the National Labor Relations Act are well known and need not here be dwelt upon. The Board must comply with the requirement 'that the unit selected must be one to effectuate the policy of the Act, the policy of efficient collective bargaining.'"

and denied enforcement of the order.

The Board appealed both of these decisions to the United States Supreme Court and, while the cases were pending for review, it was brought to the Supreme Court's attention that the plant guards had been demilitarized and then occupied the status of being merely plant protection employees of the Company. The Supreme Court thereupon vacated the judgments and the cases were "remanded to the respective Circuit Courts of Appeal for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved, and the effect thereof on the Board's orders."

The only logical basis for the remand of the two cases is that the Supreme Court approved the view that the Board is required to determine whether certification of a collective bargaining representative for particular classes

of employees would "effectuate the policies of the Act", for otherwise there would have been no necessity for reconsideration by the Circuit Courts of Appeal. The Supreme Court in the Packard case confirmed this view in the following words:

"The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by the statute, and none should be by decision. It involves of necessity a large measure of informed discretion and the decision of the Board, if not final, is rarely to be disturbed. While we do not say that a determination of a unit of representation cannot be so unreasonable and arbitrary as to exceed the Board's power, we are clear that the decision in question does not do so."

Notwithstanding the decisions of the Circuit Courts of Appeal and the United States Supreme Court, the Board in this case on February 13, 1946, without referring to the foregoing decisions then existing, ruled that it had no power to decline to certify, once it determined that the particular persons involved were "employees" under the Act (App. 201). (It should be noted that the Board did not have the benefit of the *Packard* decision at that time.)

Upon remand of the *Jones & Laughlin* case, the Sixth Circuit Court of Appeals, in the case of *N.L.R.B. v. Jones & Laughlin Steel Corporation*, 154 F. (2) 932, (C.C.A. 6) redened the Board's application for enforcement of its order. Likewise, the Seventh Circuit Court of Appeals, after the remand, considered the changed status of the plant guards and, in the case of *N.L.R.B. v. E.C. Atkins & Company*, 155 F. (2) 567 (C.C.A. 7), 11 Labor Cases 63, 176, redened the Board's application for enforcement of its order, saying:

"We are urged by the Board, however to reverse our former decision and to hold that the plant guards were

employees. We have also given this matter further consideration and are of the opinion that our former decision in this respect was correct and we reaffirm it."

The Court further stated with regard to the question of whether certification would effectuate the policies of the Act:

"Although we are doubtful that the facts concerning the demilitarization of the plant guards and their changed status as a result thereof are material to our alternative holding that the enforcement of the Board's order 'would be or is likely to be inimical to the public welfare', there is no necessity for decision on our part in this respect. This is so for the reason that the latter issue is immaterial in view of our decision that the plant guards were not employees."

We think the Board has erred under the authority of the Circuit Court of Appeals and Supreme Court decisions in the *Jones & Laughlin* and *Atkins & Company* cases, in declining to determine whether certification of a unit of foremen would "effectuate the policies of the Act."

For the sake of this argument herein, let us assume that the foremen in this case are "employees" under the Act. Under the authority of the *Jones & Laughlin* and *Atkins & Company* cases and Congress' understanding of the Board's powers and duties, it then became the duty of the Board to determine whether certification of a collective bargaining representative for the foremen and assistant foremen in this case would "effectuate the policies of the Act." The Board has expressly declined to perform this duty, stating in effect that it does not recognize the existence of such a duty. If it is concluded that the Board has, by inference, determined that certifying the Union would "effectuate the policies of the Act", we think that

the Board is manifestly wrong and has abused the discretion vested in it.

The duties and functions of the plant guards in the *Jones & Laughlin* and *Atkins & Company* cases, in acting as representatives of their employers in the vital matter of dealing with the rank and file employees, are in most respects similar to the duties and functions of the foremen here when acting for their employer in dealing with the rank and file employees. The only striking distinction between the duties and functions of these two classes of management representatives is the fact that foremen (and especially in the case where, as here, their powers are broader than those of the "typical" foreman) have a wider variety of management functions to perform, greater authority and discretion in performing them, and there is a greater absence of objective standards by which to determine that they are faithfully carrying out their duties, than in the case of plant guards. If, as the Sixth and Seventh Circuit Courts of Appeal held in the *Jones & Laughlin* and *Atkins & Company* cases, certification of a unit of plant protection employees would not "effectuate the policies of the Act", there are even more compelling reasons for a similar holding with respect to the personnel concerned in this case.

We have shown that certification of the union in this case would not "encourage the practice and procedure of collective bargaining", but would defeat it, by depriving management of faithful representatives in the bargaining process. It would in effect destroy the collective bargaining contemplated by the Act. Certification would not protect "the exercise by workers of full freedom of association, self organization and designation of representatives of their own choosing", but would destroy the exercise of

such rights by workers, because the unionized foremen, through the exercise of their authority, would interfere with the individual worker's enjoyment of such rights.

Section 1 of the Act states, as a further policy of Congress in adopting the Act, "to eliminate the causes of certain substantial obstructions to the free flow of commerce."

The Sixth Circuit Court of Appeals observed, in the *Jones & Laughlin* case, *supra*, that the "strains upon personal interest would undoubtedly be detrimental to the public interest and the free flow of commerce." Does it not clearly follow, upon the record in this case, that the strains upon the personal allegiance and personal interest of the foremen of the company would likewise be "detrimental to the public interest and free flow of commerce"? The record establishes that the foremen in this case have the most far reaching and complete authority in directing the work of the rank and file employees to produce goods for commerce. Is not the free flow of commerce interrupted when the company is required to repose in its foremen powers and duties, which in the light of common knowledge they cannot be expected to faithfully discharge once they are unionized? The record in this case establishes that the foremen, in conformity with a national policy of their Union, did not discharge even the elementary duty of coming onto the employer's premises at his request when a strike of the rank and file employees took place (App. 170, 220-222). And yet we know from the Board's decision in the case of *In Re Allis-Chalmers Manufacturing Company*, 70 N.L.R.B. (18 LRRM 1353) that the company is powerless to deprive such foremen of their responsibilities, powers and duties. How can such foremen be expected to faithfully discharge their duties to their employer in such matters as the discharge, transfer, lay-off, recall and

discipline of rank and file employees, the fixing of production standards and requiring the rank and file employees to meet those standards, and the settlement of grievances between the company and the rank and file employees? Would not such foremen constantly be torn between their sense of duty to the company and their allegiance to the principles of unionism? We believe this record incontrovertibly proves that there would not only be such strains upon the allegiance of the foremen but that, in order to preserve the goodwill of the unionized rank and file, the foremen's decision would be in the interest of the rank and file rather than in the interest of the company. As a result the public interest and the free flow of commerce would suffer. Congress certainly did not, in conferring discretion upon the Board to certify units of employees when certification would "effectuate the policies of the Act", intend to bring about any such outrageous result as we see in the record in this case. The certification by the Board was, therefore, an abuse of the discretion vested in the Board.

RELIEF

It is respectfully submitted that the decision and final order of the National Labor Relations Board of August 26, 1946, and the proceedings on which the order was based should be set aside, vacated and annulled and that the Board's petition for enforcement should be forthwith dismissed.

Respectfully submitted,

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FILED MAY 12 1947

Frederick W. Starnes
CLERK

**BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD**

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9397

L. A. YOUNG SPRING & WIRE CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

**ON PETITION TO REVIEW AND ON REQUEST FOR ENFORCE-
MENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS
BOARD**

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To be argued by:

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9397

L. A. YOUNG SPRING & WIRE CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND ON REQUEST FOR ENFORCE-
MENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS
BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition (App. 2-13)¹ of L. A. Young Spring & Wire Corporation to review and set aside an order issued by the National Labor Relations Board against petitioner pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*). In its answer to the petition, the Board has requested that its order be enforced (App. 14-19). The jurisdiction of this Court is based upon Sections 10 (e) and (f) of the Act. Petitioner is a Michigan corporation which operates a plant in Los Angeles,

¹“(App.)” refers to the pages of the Joint Appendix printed and filed in this case.

has a supervisory staff of 26 persons (App. 197; 56-57, 70). In descending order of authority, they include one general manager, one factory manager, one day superintendent, one night superintendent, twenty foremen, and two assistant foremen (*ibid.*). The twenty foremen and two assistant foremen constitute the unit found appropriate by the Board. Excluded therefrom are the four managerial officials who constitute the top stratum of authority in the plant.

3. The duties and status of petitioner's foremen

Five of the foremen and both assistant foremen are hourly paid; all other foremen are paid on a salary basis (App. 197-198; 60, 63). It is undisputed that the hiring and discharge of the foremen, their transfer between departments, their rates of pay, vacation allowances, and other remuneration, and the length of their workday are all under the complete control of petitioner's managerial officials (App. 92-93, 79-84). Although salaried foremen are compensated for time off during illness (App. 61-62), hourly rated foremen and assistant foremen are not accorded the same privilege (App. 63). A foreman may work overtime only if he secures written authorization from his immediate supervisor (App. 41; 109). Insofar as their powers and duties are concerned, no distinction is made between salaried and hourly paid foremen (App. 198; 70).

Each foreman is in charge of the operations of a department, and his duties are supervisory in nature (App. 198; 58). The assistant foremen aid the foremen, and their duties are also supervisory (App.

80-81). In order that he may efficiently discharge his duties, the foreman attends weekly foremen's meetings at which production problems are discussed (App. 198; 64-65), participates in monthly safety forums (App. 198; 68-69), and initiates time studies on new operations (App. 198; 68). The daily efficiency reports prepared by the foreman and submitted to the factory manager, the monthly departmental expense reports which are analyzed by the general manager in conjunction with the factory manager, the superintendents, and the foreman, and the reports of the time-study men afford higher management the opportunity to observe and control the efficiency of the foreman and the productivity of his department (App. 66-68).

Next to the rank and file employees the foreman occupies the lowest rank in the plant hierarchy, and his supervisory authority in relation to the rank and file employees in his department is limited both by his own superiors and by the provisions of the collective-bargaining agreement with the UAW-CIO. Interviewing and hiring of new employees is usually performed by the personnel manager; on occasion, however, a qualified foreman may be requested to interview applicants for certain skilled positions, and in such cases the foreman's recommendations generally are followed (App. 41; 87-89, 91-92, 139-140, 146). A foreman may discharge probationary employees outright (App. 198; 58); he may discharge or discipline regular subordinate employees for cause subject to petitioner's collective-bargaining agreement with the UAW-CIO (App. 198; 58, 105-107, 125-126);

and he may promote employees to better jobs within his department (App. 198; 58). The foreman rates his subordinates on forms which are submitted to the personnel department (App. 198; 108). The foreman does not participate in collective-bargaining negotiations between petitioner and UAW-CIO, although petitioner may solicit his suggestions as to matter to be incorporated in the agreement (App. 41; 71-72). Finally, the foreman represents petitioner in the initial stages of the grievance procedure involving rank and file employees (App. 198; 60, 75-76).

4. The status of the Union

The Union is a local chapter of an unaffiliated labor organization known as the Foreman's Association of America established for the exclusive purpose of representing supervisory personnel in collective bargaining (App. 204-205; 102, 187-189).⁵ By the terms of its constitution, neither the parent body nor the local chapter may affiliate with any other labor organization (App. 204-205; 188-189). The Union excludes from membership any individual "acting as negotiator in formulating employer-policy" (App. 189, 104). The Union's organization is limited to the foremen and assistant foremen of the production and maintenance division of petitioner's Los Angeles, California, plant (App. 103).

⁵ The Foreman's Association of America is the same union whose certification by the Board as exclusive bargaining representative of a unit of general foremen, foremen and assistant foremen was upheld by the Supreme Court in *Packard Motor Car Co. v. N. L. R. B.*, 67 S. Ct. 789.

5. The Board's conclusions

On the basis of the foregoing facts the Board concluded, contrary to petitioner's contentions, that the foremen and assistant foremen, on whose behalf the Union's petition was filed, were employees within the meaning of Section 2 (3) of the Act (App. 196), and that they could properly constitute an appropriate unit within the meaning of Section 9 (b) of the Act (App. 205).

6. The Board's certification of the Union

Upon these findings the Board, one member dissenting, directed, pursuant to Section 9 (c) of the Act, that an election be conducted among the foremen and assistant foremen comprising the appropriate unit to determine whether or not they wished to be represented by the Union (App. 205-206). On February 1, 1946, the election was held and the seventeen eligible voters unanimously cast their ballots in favor of representation by the Union (App. 207-208). Thereafter, on February 13, 1946, the Board certified the Union as the exclusive bargaining representative of the employees in the unit, in conformity with the provisions of Section 9 (a) and (c) of the Act (App. 207-208).

B. The unfair labor practice proceeding

On February 27, 1946, following the certification, the Union wrote petitioner requesting a conference for the purpose of bargaining on behalf of the foremen and assistant foremen (App. 216). By letter to the Union dated March 5, 1946, petitioner refused to

bargain with the Union, giving as its reason its desire to test in the courts the validity of the Board's certification (App. 217-218).

The Union thereupon filed charges with the Board alleging that petitioner had refused to bargain with it for the foremen and assistant foremen, and the Board instituted proceedings under Section 10 of the Act (App. 208-210). In its answer to the Board's complaint, petitioner admitted its refusal to bargain with the Union (App. 211, 210). After hearing, the Board, on August 26, 1946, issued its Decision and Order (App. 36-48), in which it reaffirmed its holding that the foremen and assistant foremen were employees, and that they constituted an appropriate bargaining unit (App. 40-41, 45, 46).⁶ It found that petitioner had refused to bargain with the Union on their behalf, in violation of Section 8 (1) and (5) of the Act (App. 45, 47).

SUMMARY OF ARGUMENT

Petitioner's foremen are employees within the meaning of Section 2 (3) of the Act, and they con-

⁶ Petitioner introduced evidence at the hearing to show that during the course of a strike by the rank-and-file employees, beginning on April 17, 1946, the foremen refused to cross the picket line established by the rank-and-file employees (App. 42-44; 169-171). The foremen's action was based on a statement of policy adopted by the National Executive Board of the Foreman's Association of America on January 6, 1946, respecting the conduct of members of the Foreman's Association in the event of strikes by rank-and-file employees, which the foremen interpreted as requiring mutual agreement between the UAW-CIO and petitioner as the condition of the foremen's entry into the plant (App. 43-44; 220-222, 169-170, 152).

stitute an appropriate bargaining unit within the meaning of Section 9 (b) of the Act. The Supreme Court decided in *Packard Motor Car Co. v. N. L. R. B.*, 67 S. Ct. 789, that foremen are employees within the meaning of Section 2 (3) of the Act and that "as a class" they may constitute appropriate bargaining units within the meaning of Section 9 (b) of the Act. The Court's decision is dispositive of the instant case.

ARGUMENT

The Supreme Court decision in the *Packard* case is controlling upon the propositions that the Board properly certified the Union as representative of the foremen here involved and that petitioner's admitted refusal to bargain with it on behalf of these foremen is a violation of Section 8 (5) of the Act

The issues presented in this case, and the arguments urged by petitioner, are identical with those presented to the Supreme Court in *Packard Motor Car Co. v. N. L. R. B.*, 67 S. Ct. 789. In that case the Court held that foremen are employees within the meaning of Section 2 (3) and that "as a class" they may properly constitute appropriate bargaining units within the meaning of Section 9 (b) of the Act. We submit that there are no material differences between the two cases, and that the Supreme Court's decision is controlling here.

Like the Packard foremen, petitioner's foremen occupy a position "between management and manual labor" only one step above the rank and file employees (67 S. Ct., at 792). Like the Packard foremen, they "carry the responsibility for maintaining quantity and quality of production" (67 S. Ct., at 791). Like

the Packard foremen, they exercise considerable influence over the "promotion, demotion and discipline" of rank and file employees (*ibid.*). Like the Packard foremen, they are accorded privileges and remuneration beyond that of their subordinates (*ibid.*). Like the Packard foremen, they "determined to organize as a unit of the Foreman's Association of America, an unaffiliated organization which represents supervisory employees exclusively" (*ibid.*). Like the Packard foremen, they are entitled to "the protection of the Act when they take collective action to protect their collective interests" (67 S. Ct., at 792).

The Supreme Court's decision is, on its face, dispositive of the question whether supervisory employees "as a class" are employees within the meaning of the Act, and are entitled to bargain collectively. The foremen in the instant case are clearly in the same "class" as the general foremen and foremen who were involved in the *Packard* case. Petitioner, however, seeks to distinguish that case on the ground that the foremen in this case exercise a somewhat greater degree of authority over the rank and file employees whom they supervise than did the foremen in the *Packard* case. To support such a distinction, which is plainly at odds with the broad sweep of the Supreme Court's holding, petitioner is compelled to rely upon the reservation in footnote 2 of the Supreme Court's opinion which indicates that a distinction might well be drawn between supervisory employees on the one hand, and officers, who are elected to occupy positions as agents of a corporate board of

directors, on the other.' Petitioner's attempt, in its brief, to torture the implied exemption of "vice-presidents, presidents or others of like relationship to a corporation," to fit the relationship between petitioner and its hourly paid and salaried foremen, is so procrustean in character and so patently self-refuting that the mere statement of that position is a sufficient answer.

The gravamen of petitioner's objection to the unionization of its foremen, like that of the employer in the *Packard* case, rests upon its alleged concern that their organization will militate against their faithful performance of duties. Petitioner points to the refusal of its foremen to cross the rank and file picket line (*supra*, p. 8, note 6), as confirmation of its fears. But the Board had specifically noted in its *Packard* decision that foremen and rank and file employees may be expected "to express moral sympathy for the organizational efforts of one another and will, on occasion, even refuse to cross the picket line established by the other during a strike." *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, 16. With that eventuality before it, the Supreme Court rejected the "divided loyalty" argument. That argument, it said, "is rooted in the misconception that because the employer has the right to wholehearted loyalty in the performance of the contract of employment, the em-

⁷ "If a union of vice-presidents, presidents or others of like relationship to a corporation comes here claiming rights under this Act, it will be time enough then to point out the obvious and relevant differences between the 1100 foremen of this company and corporate officers elected by the board of directors." (67 S. Ct. 792, note 2).

ployee does not have the right to protect his independent and adverse interest in the terms of the contract itself and the conditions of work. * * * In other words, it wants to be free to fight the foremen's union in the way that companies fought other unions before the Labor Act" (67 S. Ct., at 792).

Petitioner further suggests, as did the employer in the *Packard* case, that the Board's unit finding is an abuse of its discretion. This argument rests upon the assumption that the broad discretion vested in the Board under Section 9 (b) of the Act to determine the *composition* of appropriate bargaining units empowers the Board to determine that supervisory personnel may constitute *no* appropriate bargaining unit. But the Supreme Court expressly rejected that contention when it said: "There is no more reason to conclude that the law prohibits foremen as a class from constituting an appropriate bargaining unit than there is for concluding that they are not within the Act at all" (67 S. Ct., at 793). The Court went on to say, "The issue as to what unit is appropriate for bargaining * * * involves of necessity a large measure of informed discretion and the decision of the Board, if not final, is rarely to be disturbed" (*ibid.*).

Petitioner nowhere undertakes to explain in what way the Board's unit finding in this case is any more vulnerable to a charge of arbitrariness than was the Board's unit finding in the *Packard* case. Like the argument directed against the recognition of the "employee" status of supervisory personnel in the first in-

stance, the argument against grouping supervisory personnel in any unit rests almost exclusively on the "divided loyalty" premise, which, as we have shown, was decisively rejected by the Supreme Court. Since the basis for petitioner's objection was found by the Supreme Court to be without merit, petitioner's conclusion that the Board's unit finding is an abuse of discretion necessarily falls.

The broad area of discretion reposed in the Board relates to the *type* of unit in which foremen may be grouped. In the exercise of its informed discretion the Board is required to determine such problems as whether foremen should be segregated in units apart from rank and file employees and whether different levels of foremen may be combined in the same unit. No issue involving the propriety of the Board's exercise of its discretion in this respect is presented here.⁸

Finally, and completely negating petitioner's contention that relevant differences exist between this case and the *Packard* case is the fact that the Board's

⁸ At no stage during the proceedings before the Board has petitioner objected to the composition of the unit established by the Board. No issue on that score is therefore before the Court. Section 10 (e) of the Act; *N. L. R. B. v. Cheney California Lumber Co.*, 327 U. S. 385. In any event, in view of the Supreme Court's decision in the *Packard* case, the Board's unit finding is clearly proper. "There is clearly substantial evidence in support of the determination that foremen are an appropriate unit by themselves and there is equal evidence that, while the foremen included in this unit have different degrees of responsibility and work at different levels of authority, they have such a common relationship to the enterprise and to other levels of workmen that inclusion in a single unit is appropriate" (67 S. Ct., at 793).

decision in the instant case was noted with approval by the Supreme Court both in the *Packard* case (67 S. Ct. 793, note 3), and in *Bethlehem Steel Company v. New York State Labor Relations Board*, 15 U. S. Law Week 4414, 4415 (April 7, 1947), where the Court once more approved the Board's position relating to "petitions of foremen as a class to organize bargaining units."

CONCLUSION

It is respectfully submitted that a decree should issue enforcing the Board's order in full.

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APRIL 1947.

JOINT APPENDIX

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

*United States Court of Appeals
for the District of Columbia*

No. 9397

FILED JAN 15 1947

Ernest S. Scharf

CLERK

L. A. YOUNG SPRING & WIRE CORPORATION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

**On Petition for Review of Order of the National Labor
Relations Board.**

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9397.

L. A. YOUNG SPRING & WIRE CORPORATION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition for Review of Order of the National Labor
Relations Board.

JOINT APPENDIX.

I.

**PLEADINGS, DOCKET ENTRIES AND OTHER
PAPERS.**

A

Filed Oct 5 1946

In the United States Court of Appeals for the
District of Columbia

L. A. YOUNG SPRING & WIRE CORPORATION, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

**Petition for Review of Decision and Final Order of National
Labor Relations Board**

To the Honorable, the Judges of the United States Court
of Appeals for the District of Columbia:

Comes now the L. A. Young Spring & Wire Corporation, a corporation organized and existing under the laws of the State of Michigan, and files its petition pursuant to the provisions of Sec. 10 of the Act of Congress of July 5, 1935 (Chap. 372, 49 Stat. 449-457), known and cited as the National Labor Relations Act, for a review of the decision and final order of the National Labor Relations Board entered at Washington, D. C. on August 26, 1946, ordering that petitioner cease and desist from certain practices denominated by said Board as "unfair labor practices" and directing petitioner to bargain collectively with the Foremen's Association of America, Chapter No. 155, as the exclusive representative of all foremen and assistant foremen in the production and maintenance division of petitioner's Los Angeles plant in respect to rates of pay, wages, hours of employment and other conditions of employment, and respectfully shows unto this court as follows:

B

I

THE NATURE OF THE PROCEEDINGS AS TO WHICH REVIEW
IS SOUGHT.

A. The petition for certification.

That on April 4, 1945, the Foremen's Association of America, Chapter No. 155, filed with the Regional Director of the National Labor Relations Board at Los Angeles, California, a petition for certification of representatives, requesting the Board to certify the said Foremen's Association of America, Chapter No. 155, as the exclusive bargaining representative for all foremen and assistant foremen in the production and maintenance division of petitioner's plant at 3200 E. Slauson Ave., Los Angeles, California.

*B. Hearing, direction of election and certification
of representatives.*

That thereafter, on May 7 and 8, 1945, hearings were held before a Trial Examiner of the National Labor Relations Board at Los Angeles, California, in a proceeding entitled, "In the matter of L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter No. 155, Case No. 21-R-2716", and on January 8, 1946, the National Labor Relations Board issued a two to one decision, Member Reilly dissenting, and directed an election by secret ballot at the plant of the L. A. Young Spring & Wire Corporation, at Los Angeles, California, to determine the exclusive bargaining representative for the said foremen and assistant foremen; that pursuant to such decision and direction of election, an election was conducted on February 1, 1946, and on February 13, 1946, the Board certified the Foremen's Association of America, Chapter No. 155, as the exclusive bargaining representative of all said foremen and assistant foremen.

C. Charge of unfair labor practices.

That on March 12, 1946, the Foremen's Association of America, Chapter No. 155, filed with the Regional
c Director of the National Labor Relations Board at Los Angeles, California, a charge to the effect that petitioner had engaged in and was engaging in unfair labor practices, within the meaning of Sec. 8, Sub-Secs. (1) and (5) of the National Labor Relations Act, in refusing to bargain collectively with the said Foremen's Association of America, Chapter No. 155, as the exclusive bargaining representative of said foremen and assistant foremen.

D. The complaint and its contents.

That on April 15, 1946, the National Labor Relations Board issued a complaint against the petitioner in a proceeding entitled "In the matter of L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter No. 155, Case No. 21-C-2716", in which it in substance alleged that petitioner was a corporation organized and existing under the laws of the State of Michigan, with its principal office at Detroit, Michigan, and with a branch plant at 3200 E. Slauson Ave., Los Angeles, California, where it manufactures and sells spring wire products; that petitioner purchases steel and quantities of other raw materials from other states and other countries and transports such raw materials into the State of California, and sold substantial quantities of spring wire products and caused them to be transported out of the State of California into other states and into foreign countries; that the Foremen's Association of America, Chapter No. 155, was a labor organization within the meaning of the National Labor Relations Act and that all foremen and assistant foremen in the production and maintenance division of petitioner's Los Angeles plant constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act; that on or about February 1, 1946, a majority of petitioner's employees within such

appropriate unit had selected the Foremen's Association of America, Chapter No. 155, as their representative for the purposes of collective bargaining, and that since on or about February 1, 1946, the said Union was the exclusive representative of all such employees for the purposes of collective bargaining; that since on or about March 5, 1946, your petitioner, through its officers, agents and representatives, had continuously refused and failed to bargain collectively with the said Union and had thereby engaged in and was engaged in unfair labor practices within the meaning of Sec. 8, Sub-Sec. (5) of the said Act; that by said course of conduct your petitioner had interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Sec. 7 of the Labor Relations Act, and thereby engaged in unfair labor practices within the meaning of Sec. 8, Sub-Sec. (1) of the said Act; that such alleged course of conduct tended to lead to labor disputes, burdening and obstructing interstate and foreign commerce, and constituted unfair labor practices within the meaning of Sec. 8, Sub-Secs. (1) and (5) and Sec. 2, Sub-Secs. (6) and (7) of the said Act.

E. Answer and amended answer.

That thereafter, on about April 26, 1946, your petitioner filed its answer, admitting that it was a corporation engaged in interstate and foreign commerce, but denying the material allegations of the complaint charging the commission of any unfair labor practices. Petitioner's answer affirmatively alleged that the foremen and assistant foremen referred to in the said complaint are not "employees" within the meaning of the National Labor Relations Act, and particularly within the meaning of Section 2(3), 8(1), 8(5), 9(a) and 9(b) of the Act; that the foremen and assistant foremen referred to in said complaint were "employers" within the meaning of the Act, particularly within the meaning of Sections 2(2), (2)(3) and 8(5) of the Act; that the foremen and assistant foremen referred to in said

complaint did not constitute a unit appropriate for the purposes of collective bargaining within the meaning of said Act, and particularly within the meaning of Secs.

9(a) and 9(b) of the Act; that certification of the Union referred to in the complaint as an exclusive representative for collective bargaining purposes of the foremen and assistant foremen referred to in said complaint would not insure to employees the full benefit of their right of self-organization and to collective bargaining or otherwise effectuate the policies of the Act within the meaning of the Act, and particularly within the meaning of Sec. 9(b) of the Act; and that the Union referred to in said complaint is not a labor organization within the meaning of the National Labor Relations Act and particularly within the meaning of Sec. 2(5) of the Act.

That thereafter, and on May 15, 1946, your petitioner amended its answer, affirmatively alleging that the foremen and assistant foremen referred to in said complaint were not the kind of employees that were intended to be covered and that come within the meaning and scope of the National Labor Relations Act. Your petitioner respectfully prayed that the complaint filed by the Board be dismissed.

F. Proceedings before Trial Examiner.

That thereafter a hearing was conducted before Victor Hirshfield, Esq., a Trial Examiner appointed by the Board, at Los Angeles, California, on May 15, 1946; that numerous witnesses were heard at the hearing and a record of considerable length was made.

G. Trial Examiner's Intermediate Report.

That on May 29, 1946, the said Victor Hirshfield, Esq., as Trial Examiner, issued his Intermediate Report, containing findings of fact and conclusions of law, which were against the contentions of petitioner on practically all the material and controverted issues, and recommending that

your petitioner be ordered to cease and desist from refusing to bargain collectively with Foremen's Association of America, Chapter No. 155, as exclusive representative of all said foremen and assistant foremen, and recommending that your petitioner be ordered to bargain collectively with the said Union as the exclusive bargaining representative of all such foremen and assistant foremen.

H. Order transferring case to National Labor Relations Board.

On May 31, 1946, the Board entered its order, transferring the case from the Trial Examiner and directing that the proceedings be transferred to and continued before the Board.

I. Exceptions to Trial Examiner's Intermediate Report, Motion to Dismiss, Brief and Hearing.

That thereafter, on about July 1, 1946, your petitioner filed with the National Labor Relations Board its exceptions to the Trial Examiner's Intermediate Report and a Motion to Dismiss the Complaint; that in said exceptions and motion, your petitioner excepted to the findings of fact, conclusions of law and recommendations of the said Trial Examiner, and particularly alleged that the foremen and assistant foremen referred to in the complaint were not "employees" under the provisions of the National Labor Relations Act; that the said foremen and assistant foremen referred to in the complaint were "employers" under the provisions of the said Act; that the said foremen and assistant foremen did not constitute a unit appropriate for the purposes of collective bargaining under said Act; that certification of the Union as exclusive bargaining representative for the said foremen and assistant foremen would not insure to employees the full benefit of their right to self-organization and collective bargaining or otherwise effectuate the policies of the

Act within the meaning of the Act and particularly within the meaning of Sec. 9(b) of the Act; that the said Union is not independent of the labor organization which represents your petitioner's rank and file employees; that the issuance of an order directing your petitioner to bargain with the foremen and assistant foremen in the company would constitute an illegal, unwarranted, arbitrary and unreasonable interference with the rights of
 g your petitioner, in violation of the Constitution of the United States, and particularly the Fifth Amendment thereof; that any order directing your petitioner to bargain with the foremen and assistant foremen referred to in the complaint would be beyond the limits of discretion vested in the Board and an abuse of that discretion, and contrary to the provisions of the Act and detrimental to the public interest and the free flow of commerce; that the findings, certificates, decisions and directions of the Board in the representation hearing were beyond the limits of discretion vested in the Board and an abuse of that discretion and contrary to the provisions of the Act and detrimental to the public interest and the free flow of commerce; that the National Labor Relations Board had no jurisdiction, power or right to institute or permit to be instituted or to take jurisdiction over the representation proceeding, out of which and in connection with which the complaint was filed, or to issue any orders, decisions or directions in that proceeding. Counsel for your petitioner filed a brief and a supplement thereto in support of petitioner's exceptions and motion. No brief was filed in behalf of the Board or in behalf of the Foremen's Association of America, Chapter No. 155. Oral argument was held before the Board on July 16, 1946, at which your petitioner and the Union were represented by counsel.

J. Final order and decision of the Board.

That thereafter, on August 26, 1946, the Board issued a two to one decision and final order, Member Reilly dis-

senting, containing findings of fact and conclusions of law which were against the contentions of petitioner on practically all of the material and controverted issues; that said findings of fact are not supported by or based upon evidence in said cause; that said conclusions of law are contrary to petitioner's contentions on practically all material issues and are without legal basis in the record of said cause; that said findings by the Board, in effect, found petitioner guilty of the unfair labor practices charged in the complaint; that based upon said findings of fact and conclusions of law, the Board ordered your petitioner to cease and desist from the so-called unfair labor practices, and particularly ordered your petitioner to bargain collectively with the Foremen's Association of America, Chapter No. 155, as the exclusive representative of all said foremen and assistant foremen in respect to rates of pay, wages, hours of employment and other conditions of employment, and ordered your petitioner to post notices for a period of at least sixty consecutive days in conspicuous places in its Los Angeles plant, stating that it would cease and desist from such alleged unfair labor practices and would bargain collectively with the said Foremen's Association of America, Chapter No. 155, and directing your petitioner to notify the Regional Director of Los Angeles, California, within ten days as to its compliance with said order; that your petitioner has declined to comply with the said decision and order for the reason that it considers the said decision and order void and of no effect as to your petitioner, and your petitioner has so advised the Regional Director of the National Labor Relations Board at Los Angeles, California.

II

THE FACTS AND STATUTES UPON WHICH VENDUE IS BASED.

A. Your petitioner is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of Michigan, and was at all times herein

mentioned engaged in the manufacture and sale of steel wire products at a plant at 3200 E. Slauson Ave. in Los Angeles, Los Angeles County, State of California.

B. The case before the National Labor Relations Board entitled "L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter No. 155, Case No. 21-R-2816," involved the question of representation of the foremen and assistant foremen of your petitioner at

its plant in Los Angeles, California. The case before the National Labor Relations Board entitled

"In the Matter of L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter 155, Case No. 21-C-2716," involved alleged unfair labor practices in violation of said National Labor Relations Act, claimed to have been carried on and committed by your petitioner at its plant in Los Angeles, California.

C. The respondent is a public body known as the National Labor Relations Board, created pursuant to the Act of Congress of July 5, 1935, Chapter 372, 49 Stat. 449.

D. In the above mentioned proceedings before said respondent involving your petitioner, respondent entered a final order under date of August 26, 1946, directed against your petitioner. By reason of the matters hereinabove alleged, this court has jurisdiction of your petitioner and of the said respondent and of this matter under Section 10(f) of the National Labor Relations Act.

III.

THE RELIEF PRAYED.

Your petitioner petitions this honorable court for a review of the decision and direction of election entered in the above mentioned case on January 8, 1946, the certification of representatives issued on February 13, 1946, and the decision and final order entered on August 26, 1946, and further respectfully prays:

(a) That a copy of this petition and the process of this court be served upon the respondent National Labor Rela-

tions Board, as provided by Sec. 11(5) of the National Labor Relations Act.

(b) That the National Labor Relations Board be directed and required by an appropriate order of this court forthwith to certify and file with this court, pursuant to Sec.

10(f) of the National Labor Relations Act, a transcript of the entire record in the proceedings, including all exhibits and the originals of all papers filed with the Board in the proceedings from which the complaint was formulated and issued.

(c) That this petition for a review be preferred and heard and determined expeditiously, as provided in Sec. 10(i) of the National Labor Relations Act.

(d) That the proceedings before the Board set forth in said transcript be reviewed by this honorable court, and that the decision and direction of election of January 8, 1946, the certification of representatives of February 13, 1946, and the decision and final order of August 26, 1946, and each of them, be set aside, vacated and annulled, and that the respondent be ordered to dismiss its said complaint against your petitioner.

(e) That this honorable court enter an order herein staying each and every order of the Board contained in its decision and direction of election of January 8, 1946, its certification of representatives of February 13, 1946, and its order and decision of August 26, 1946, hereinabove referred to, until the final determination of this review.

(f) That this honorable court grant to petitioner such other and further relief in the premises as its rights and equities in the cause may require.

IV.

THE POINTS UPON WHICH PETITIONER INTENDS TO RELY.

In this review, your petitioner intends to rely upon the following points:

(a) The National Labor Relations Board erred in overruling your petitioner's motion to dismiss the petition for certification of representatives and the proceedings thereon for lack of jurisdiction, which motion was made on May 7, 1945.

(b) The National Labor Relations Board erred in overruling your petitioner's exceptions to the Trial Examiner's Intermediate Report, which exceptions were filed on about July 1, 1946.

(c) The National Labor Relations Board erred in overruling your petitioner's motion to dismiss the complaint and the proceedings thereon, which motion to dismiss was filed on about July 1, 1946.

(d) The National Labor Relations Board erred in its decision and direction of election issued on January 8, 1946, in the certification of representatives issued on February 13, 1946, and in its decision and order issued on August 26, 1946, and said decision and direction of election, certification of representatives and decision and order should be vacated, annulled and set aside for the following reasons:

(1) The foremen and assistant foremen in the production and maintenance division of petitioner's Los Angeles plant are not "employees" within the meaning of the National Labor Relations Act and the Board was without jurisdiction to issue said decisions, certification and order.

(2) The foremen and assistant foremen in the production and maintenance division of petitioner's Los Angeles plant are not the kind of employees intended to be covered and that come within the meaning and scope of the National Labor Relations Act.

(3) The National Labor Relations Board abused its discretion in determining that the foremen and assistant foremen at your petitioner's Los Angeles plant constitute an appropriate unit for collective bargaining under the National Labor Relations Act.

(4) The National Labor Relations Board abused its discretion in failing and refusing to determine

that certification of the Foremen's Association of America, Chapter No. 155, as the exclusive bargaining representative of the foremen and assistant foremen at your petitioner's Los Angeles plant would not insure to employees the full benefit of their right to self-organization and collective bargaining and would not otherwise effectuate the policies of the National Labor Relations Act.

(5) The National Labor Relations Board erred in finding that the Foremen's Association of America, Chapter No. 155, is independent of the labor organization which represents the rank and file of the employees of your petitioner.

(6) The decisions, certification and order are erroneous, unauthorized and insufficient in law and are not supported by adequate or substantial evidence.

(7) The construction placed upon the National Labor Relations Act by the Board, in issuing its decisions, certification and order, results in an illegal, unwarranted, arbitrary, capricious and unreasonable interference with the rights of your petitioner, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

Respectfully submitted,

L. A. YOUNG SPRING & WIRE CORPORATION

By C. M. YOUNG,
Vice President.

COOK, SMITH, JACOBS & BEAKE,

By BETHEL B. KELLEY,
Attorneys for Petitioner,
4250 Penobscot Building,
Detroit 26, Michigan.

Dated: Detroit, Michigan
October 4, 1946.

* * * * *

M

Filed Nov. 12, 1946

Answer of National Labor Relations Board to Petition for Review of and to Set Aside Its Order and Request for Enforcement of Said Order

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, (49 Stat. 449, U. S. C. Supp. V, Title 29, Sec. 151, *et seq.*), hereinafter called the Act, files this answer to the petition for review of and to set aside an order issued by the Board against L. A. Young Spring and Wire Corporation, petitioner herein, and the Board's request for enforcement of said order.

1. Answering the allegations contained in Part I, paragraphs A, B, C, D, E, F, G, H, and I, of the Petition for Review, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter.

2. Answering the allegations contained in Part I, paragraph J, of the Petition for Review, the Board prays reference to the certified transcript of the record, filed
x herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter. And further answering the allegations contained in the said paragraph of the Petition for Review, the Board admits that the Petitioner has declined to comply with the Board's Decision and Order, but denies that the Board's Decision and Order is void and of no effect.

3. The Board admits the allegations contained in Part II, paragraphs A, B, C, and D of the Petition for Review.

4. The Board respectfully requests this Court to deny the Petitioner's prayer, contained in Part III of the Petition for Review, that the Decision and Direction of Election, the Certification of Representatives, and the Decision and Order of the Board be set aside, vacated and annulled, and that the Board's complaint be dismissed. The Board further respectfully requests this Court to deny the Petitioner's prayer, contained in Part III of the Petition for Review, that each and every order contained in the Decision and Direction of Election, Certification of Representatives, and Decision and Order of the Board be stayed until the final determination of this review.

5. The Board denies each and every allegation of error contained in Part IV, subparagraphs (a), (b), (c), and (d) of the Petition for Review.

6. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

Further answering, the Board, pursuant to Section 10 (e) of the National Labor Relations Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on August 26, 1946, in the proceedings designated on the records of the Board as Case No. 21-C-2716, entitled: "In the Matter of L. A. Young Spring & Wire Corporation, and Foreman's Association of America, Chapter No. 155."

7. In support of this request for enforcement of its order, the Board respectfully shows:

(a) L. A. Young Spring and Wire Corporation, a Michigan corporation, is engaged in business at Los Angeles, California. This Court has jurisdiction of the Petition for Review herein and of the request for enforcement by virtue of Section 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is here-

by made, and including a petition for the certification of representatives, hearing for the purpose of taking testimony and receiving other evidence, Decision and Direction of Election issued pursuant thereto, Certification of Representatives, complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions thereto, the Board, on August 26, 1946, duly stated its finding of fact and conclusions of law and issued its order directed to petitioner and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, L. A. Young Spring & Wire Corporation, Las Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles plant; in respect to rates of pay, wages, hours of employment, and other conditions of employment;

P (b) In any manner interfering with the efforts of Foreman's Association of America, Chapter No. 155, unaffiliated, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as

the exclusive representative of all foremen and assistant foremen in the production and maintenance division of its Los Angeles plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) On August 29, 1946, the Board's Decision and Order was duly served upon the Petitioner.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

WHEREFORE, The Board prays this Honorable Court that it cause notice of the filing of this answer and request of enforcement, and the filing of the certified transcript of the entire record in this proceeding, to be served upon petitioner and that this Court take jurisdiction of the proceeding and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon the order set forth hereinabove, a decree denying the petition to review and set aside and enforcing in whole said order of the Board, and requiring peti-

tioner and its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by petitioner, marked "Appendix A", shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by a decree of the United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:"

Dated at Washington, D. C., this 6th day of November, 1946.

/s/ A. NORMAN SOMERS,
Assistant General Counsel
 NATIONAL LABOR RELATIONS BOARD.

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APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL BARGAIN collectively upon request, with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all our employees in a bargaining unit composed of:

All foremen and assistant foremen in the production and maintenance department of our Los Angeles plant.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain with us, or refuse to bargain with said Union as the exclusive repre-

sentative of the employees in the bargaining unit set forth above.

L. A. YOUNG SPRING & WIRE CORPORATION
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date of posting, and must not be altered, defaced, or covered by any other material.

S DISTRICT OF COLUMBIA, SS:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent and petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and petition for enforcement and has knowledge of the contents thereof; and that the statements therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 6th day of November, 1946.

/s/ KATHRYN B. HARRELL,
Notary Public, District of Columbia.

My Commission expires March 7, 1947.

(SEAL)

* * * * *

409

May 31, 1946

United States of America
Before the National Labor Relations Board
Trial Examining Division
Washington, D. C.

Case No. 21-C-2716

In the Matter of

L. A. YOUNG SPRING & WIRE CORPORATION
and

FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER No. 155

Mr. James A. Cobey, for the Board.

Cook, Smith, Jacobs & Beake, by Mr. Grant L. Cook, of
Detroit, Mich., for the Respondent.Mr. Warren B. Logan, of South Gate, Calif., for the
Union.**Intermediate Report****STATEMENT OF THE CASE.**

Upon a charge duly filed by Foreman's Association of America, Chapter No. 155, an unaffiliated organization, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated April 15, 1946, against L. A. Young Spring & Wire Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and 8 (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of the hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent, on or about March 5, 1946, and thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit, in an election conducted under the supervision of the Board on February 1, 1946, had designated and selected the Union as their representative for the purposes of collective bargaining, and that the respondent thereby interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

The respondent thereafter filed its amended answer in which it admitted that on February 1, 1946, a majority of the persons in the unit described in the complaint, in an election conducted under the supervision of the Board, had

410 affirmatively expressed their desire to be represented by the Union, and that on approximately the date mentioned in the complaint and thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of the employees in such unit; but denied that its foremen and assistant foremen are employees within the meaning of the Act, contending that they are employers, and denied therefore that the unit composed of such foremen and assistant foremen was appropriate for the purposes of collective bargaining within the meaning of Sections 2 (3), 8 (1), 8 (5), 9 (a), and 9 (b) of the Act, and further denied that it had engaged in any unfair labor practices within the meaning of the Act.

Pursuant to notice a hearing was held on May 15, 1946, at Los Angeles, California, before Victor Hirshfield, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented at the hearing by counsel and the Union by a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. The parties

did not avail themselves of the opportunity afforded them to present oral argument before, or to file briefs with, the undersigned.

Upon the entire record of the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT.

I. THE BUSINESS OF THE RESPONDENT.

L. A. Young Spring & Wire Corporation, a Michigan corporation with its principal place of business at Detroit, Michigan, is the world's largest manufacturer of spring wire products, and normally supplies about 40 percent of the springs used by the automotive industry. Respondent operates manufacturing plants at Detroit, Michigan; Toronto and Windsor, Ontario, Canada; Chicago and Joliet, Illinois; Trenton and Clifton, New Jersey; Memphis, Tennessee; Birmingham and Leeds, Alabama; Oakland and Los Angeles, California. At the Los Angeles plant, respondent's only plant involved in this proceeding, the respondent is engaged in the manufacture and sale of automobile cushion spring constructions, innerspring mattress units, cushion pad supports, plastic parts, and miscellaneous aircraft parts. From October 1, 1945 to March 31, 1946, the respondent purchased for its use in operating this plant, raw materials, consisting chiefly of wire and steel, exceeding \$25,000 in value. Of these purchases, approximately 10 percent in volume, as well as in dollar value, were brought into the State of California from other states of the United States and from foreign countries. During the same period the value of respondent's sales of manufactured products was in excess of \$148,065.90, none of which was directly shipped to points outside the State of California. However, sales to the Ford Motor Company, General Motor Corporation, C. B. Van Vorst & Company, National Automotive Fibres Co., Modern Plastics Company, Lockheed Aircraft Corporation, and North American

Aviation, Inc., accounted for 99 percent in dollar value and volume of these sales. Some, and perhaps all, of these companies are engaged in interstate commerce.¹ It is found that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED.

Foreman's Association of America, Chapter No. 155, unaffiliated, is a labor organization admitting to membership supervisory employees of the respondent.

411 III. THE UNFAIR LABOR PRACTICES.

A. *The refusal to bargain.*

1. The appropriate unit and representation by the Union of a majority therein.

On January 8, 1946, the Board issued a Decision and Direction of Election in Case No. 21-R-2816,² finding among other things, that all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles plant, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On or about February 1, 1946, pursuant to said Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director for the Twenty-first Region. Upon the conclusion of the election a Tally of Ballots was furnished the respondent and the Union in accordance with the Rules and Regulations of the Board. No objections were filed by the respondent or the Union within the time provided therefor. The Tally showed that all of approximately 17 eligible voters cast valid votes for the Union. On February 13, 1946, the Board certified the Union as the representative for the purposes of collective

¹ The Board has taken jurisdiction in the following cases: Matter of Lockheed Aircraft Corporation, 57 N. L. R. B. 41; Matter of North American Aviation, Inc., 44 N. L. R. B. 604.

² Matter of L. A. Young Spring & Wire Corporation, 65 N. L. R. B. 298.

bargaining of the employees in the unit heretofore described.

The respondent contests the appropriateness of the unit found by the Board, and hence the subsequent certification of the Union therefor. Its arguments in this case are substantially the same as those made before the Board in the previous representation case. These arguments were (1) the unit was inappropriate because foremen are employers rather than employees within the meaning of the Act; and (2) that the Union is not independent of the labor organization which represents respondent's rank and file employees. No additional evidence, not already considered by the Board, to support the respondent's contention was introduced in the present hearing, except as follows:

The respondent attempted to show that its foremen were cooperating with respondent's hourly-rated workers in a strike in which the latter have engaged since April 17, 1946. The only evidence adduced by the respondent to support its contention was testimony which indicated that the foremen had declined to cross the strikers' picket line. The undersigned finds it unnecessary to decide whether or not the conduct of the foremen in respecting the rank and file strikers' picket line was tantamount to cooperation with the strikers.³ Such cooperation, if it existed, might, at the most indicate a lack of independence on the part of the Union. In any case, the respondent's contention with respect to the Union's lack of independence is no longer material since the Board's decision in the *Jones & Laughlin* case⁴ wherein it was held that the Board had no power to limit the choice of a collective bargaining representative for a unit of foremen to an independent, unaffiliated foremen's union. The undersigned is convinced, and finds, that the evidence relied on by the respondent in this proceeding,

³ In *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, 16, the Board speaking of the possibility of common action between foremen and rank and file, stated, "... it is to be expected that they will express moral sympathy for the organization efforts of one another and will, on occasion, even refuse to cross the picket line established by the other during a strike."

⁴ *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B. 386.

including the evidence submitted by it in Case No. 21-R-2816,⁵ is insufficient to warrant a finding that the unit heretofore found by the Board to be appropriate, is inappropriate.⁶

412 The undersigned finds that all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles, California, plant, constitute, and during all the times material herein constituted, a unit appropriate for the purposes of collective bargaining. The undersigned further finds that on and after February 1, 1946, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was on February 1, 1946, and at all times thereafter has been, and now is, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain.

On February 27, 1946, the Union wrote to the respondent, referring to the election results and requesting that the respondent fix a time not later than March 7, 1946 for the purpose of commencing collective bargaining. By letter dated March 5, 1946, the respondent replied that it would not meet with the Union for the purpose of collective bargaining, stating, among other things, that since it was not in accord with the Board's decision in the earlier representation case, it was refusing to bargain with the Union in order that it might carry the matter to the Circuit Court of Appeals. The undersigned accordingly finds that the re-

⁵ Matter of L. A. Young Spring & Wire Corporation, See ftn. 2, supra.

⁶ See also: Matter of Soss Manufacturing Company, 56 N. L. R. B. 1212; Matter of Packard Motor Car Company, 61 N. L. R. B. 4 and 64 N. L. R. B. 1212; Matter of the B. F. Goodrich Company, 65 N. L. R. B. 294; Matter of Simmons Company, 65 N. L. R. B. 984; Matter of the Midland Steel Products Company, 65 N. L. R. B. 997; Matter of Hudson Motor Car Company, 67 N. L. R. B. 52.

spondent on March 5, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY.

Since it has been found that the respondent has engaged in unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW.

1. Foreman's Association of America, Chapter No. 155, unaffiliated, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles,

California, plant, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

413 3. Foreman's Association of America, Chapter No. 155, unaffiliated, was on February 1, 1946, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on March 5, 1946, and at all times thereafter, to bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as exclusive representative of all its employees in the appropriate unit, the respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, L. A. Young Spring & Wire Corporation, and its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all of its employees in the above described appropriate unit;

(b) Engaging in any like or related act or conduct interfering with, restraining, or coercing its employees in the

exercise of the right to self-organization, to form labor organizations, to join or assist Foreman's Association of America, Chapter No. 155, unaffiliated, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all of its employees in the aforesaid appropriate unit;

(b) Post at its plant at Los Angeles, California, copies of the notice attached to the Intermediate Report herein, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the representative, be posted by the respondent immediately after receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

414 (c) File with the Regional Director for the Twenty-first Region on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail, the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

VICTOR HIRSHFIELD,
Trial Examiner.

Dated: May 29, 1946.

* * * * *

422 **Exceptions to Trial Examiner's Report**

Now comes the respondent L. A. YOUNG SPRING & WIRE CORPORATION and excepts and objects to the Intermediate Report of the Trial Examiner dated the 29th day of May,

1946, and filed in the above proceeding, in the following particulars:

1. To so much of the decision embraced in the statement of the case, which states: "Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties."

2. To so much of the Finding of Fact, numbered III-A-1, which finds that:

"Its arguments in this case are substantially the same as those made before the Board in the previous representation case. These arguments were (1) the unit was inappropriate because foremen are employers rather than employees within the meaning of the Act; and (2) that the Union is not independent of the labor organization which represents respondent's rank and file employees. No additional evidence, not already considered by the Board, to support the respondent's contention was introduced in the present hearing, except as follows:

"The respondent attempted to show that its foremen were cooperating with respondent's hourly-rated workers in a strike in which the latter have engaged since April 17, 1946. The only evidence adduced by the respondent to support its contention was testimony which indicated that the foremen had declined to cross the strikers' picket line. The undersigned finds it unnecessary to decide whether or not the conduct of the foremen in respecting the rank and file strikers' picket line was tantamount to cooperation with the

423 strikers.³ Such cooperation, if it existed, might, at the most indicate a lack of independence on the part of the Union. In any case, the respondent's contention with respect to the Union's lack of independence is no longer material since the Board's decision in the Jones & Laughlin case⁴ wherein it was held that the Board had

³ In Matter of Packard Motor Car Company, 61 N. L. R. B. 4, 16, the Board speaking of the possibility of common action between foremen and rank and file, stated, ". . . it is to be expected that they will express moral sympathy for the organization efforts of one another and will, on occasion, even refuse to cross the picket line established by the other during a strike."

⁴ Matter of Jones & Laughlin Steel Corporation, 66 N. L. R. B. 386.

no power to limit the choice of a collective bargaining representative for a unit of foremen to an independent, unaffiliated foremen's union. The undersigned is convinced, and finds, that the evidence relied on by the respondent in this proceeding, including the evidence submitted by it in Case No. 21-R-2816⁵, is insufficient to warrant a finding that the unit heretofore found by the Board to be appropriate, is inappropriate.⁶

"The undersigned finds that all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles, California, plant, constitute, and during all the times material herein constituted, a unit appropriate for the purposes of collective bargaining. The undersigned further finds that on and after February 1, 1946, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that pursuant to the provisions of Section 9(a) of the Act, the Union was on February 1, 1946, and at all times thereafter has been, and now is, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

3. To so much of the Finding of Fact, numbered III-A-2, which finds that "The undersigned accordingly finds that the respondent on March 5, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

4. To the Finding of Fact numbered IV, and to each and every part thereof.

⁵ Matter of L. A. Young Spring & Wire Corporation, See fn. 2, supra.

⁶ See also: Matter of Soss Manufacturing Company, 56 N. L. R. B. 1212; Matter of Packard Motor Car Company, 61 N. L. R. B. 4 and 64, N. L. R. B. 1212; Matter of the B. F. Goodrich Company, 65 N. L. R. B. 294; Matter of Simmons Company, 65 N. L. R. B. 984; Matter of the Midland Steel Products Company, 65 N. L. R. B. 997; Matter of Hudson Motor Car Company, 67 N. L. R. B. 52."

5. To the Finding of Fact numbered V, and to each and every part thereof.

6. To the Conclusions of Law, numbered 1, 2, 3, 4, 5, and 6, and to each and every part thereof.

7. To the Recommendations of the Trial Examiner numbered 1(a), 1(b), 2(a), 2(b) and 2(c).

8. To the sustaining, at page 29 of the record, of the objection made by the attorney for the Board to the following question addressed by respondent's counsel to Warren B. Logan, the President of the complainant Union: "Q. That it right. Do you agree that this strike called by the hourly rated workers and their Union was proper in this case?"

9. To the failure of the Trial Examiner to find that certification of the complainant Union as a representative of the Foremen and Assistant Foremen, referred to in the complaint, would not insure to employees the full benefit of their right to self-organization and collective bargaining, or otherwise effectuate the purposes of the Act within the meaning of the National Labor Relations Act, particularly within the meaning of Section 9(b) of the Act.

10. Exception is taken to the Board assuming jurisdiction in this proceeding and to the issuance of the complaint therein, for the following reasons:

(a) Because the Foremen and Assistant Foremen are not employees under the provisions of the National Labor Relations Act;

(b) Because the Foremen and Assistant Foremen
425 do not constitute a unit appropriate for the purposes of collective bargaining under the provisions of the National Labor Relations Act;

(c) Because the National Labor Relations Board has no jurisdiction or authority to file a complaint in this proceeding, and has no jurisdiction over the subject matter set forth in said complaint;

(d) Because the exercise of jurisdiction by the National Labor Relations Board in this proceeding and the issuance of any order directing or requiring the L. A. Young Spring

& Wire Corporation to collectively bargain with its Foremen and Assistant Foremen would constitute an illegal, unwarranted, arbitrary and unreasonable interference with the rights of the L. A. Young Spring & Wire Corporation, in violation of the Constitution of the United States, particularly the Fifth Amendment thereof;

(e) Because any order or directive issued by the National Labor Relations Board in the present proceeding, directing, ordering or requiring the L. A. Young Spring & Wire Corporation to collectively bargain with any representative of the Foremen or Assistant Foremen of the L. A. Young Spring & Wire Corporation is beyond the limits of discretion vested in the Board and an abuse of that discretion, and would be contrary to the provisions of the National Labor Relations Act and detrimental to the public interest and the free flow of commerce;

(f) Because the National Labor Relations Board had no jurisdiction, power or right to institute or permit to be instituted or to take jurisdiction over the proceeding in the case entitled "In the Matter of L. A. Young Spring & Wire Corporation," No. 21-R-2816, the proceeding out of which and in connection with which and based upon which the present complaint is filed, or to issue any orders, decisions, directions or certificates in that proceeding;

(g) Because the findings, certificates, decisions and directions issued by the National Labor Relations Board in the cause entitled "In the Matter of L. A. Young 426 Spring & Wire Corporation, Case No. 21-R-2816" are illegal, unconstitutional, null and void and of no force and effect and afford no basis for the filing of the complaint in this proceeding.

(h) Because the findings, certificates, decisions and directions issued by the National Labor Relations Board in the case entitled "In the Matter of L. A. Young Spring & Wire Corporation, Case No. 21-R-2816" are contrary to the evidence submitted in that proceeding, are beyond the limits of the discretion vested in the Board, are an abuse

of discretion, and are contrary to the provisions of the National Labor Relations Act and detrimental to public interest in the free flow of commerce.

L. A. YOUNG SPRING & WIRE CORPORATION,
By COOK, SMITH, JACOBS & BEAKE,
Its Attorneys

Address: 4200 Penobscot Building,
Detroit 26, Michigan.

Dated: June 29, 1946

* * * * *

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Motion to Dismiss Complaint

Now comes L. A. Young Spring & Wire Corporation, a Michigan corporation, the respondent in the above entitled proceeding, and moves that the complaint filed in said proceeding be dismissed for the following reasons:

1. Because the foremen and assistant foremen of the L. A. Young Spring & Wire Corporation are not employees under the provisions of the National Labor Relations Act.

2. Because the foremen and assistant foremen of the L. A. Young Spring & Wire Corporation do not constitute a unit appropriate for the purposes of collective bargaining under the provisions of the National Labor Relations Act.

3. Because the National Labor Relations Board has no jurisdiction, power or authority to file a complaint in this proceeding and has no jurisdiction over the subject matter set forth in said complaint.

429 4. Because the exercise of jurisdiction of the National Labor Relations Board in this proceeding and the issuance of any order or directive directing or requiring the L. A. Young Spring & Wire Corporation to collectively bargain with its foremen and assistant foremen would constitute an illegal, unwarranted, arbitrary and unreasonable interference with the rights of the L. A. Young Spring & Wire Corporation and would be in violation of

the Constitution of the United States and particularly of the Fifth Amendment thereof.

5. Because any order or direction issued by the National Labor Relations Board in the present proceeding directing, ordering or requiring L. A. Young Spring & Wire Corporation to collectively bargain with any representative of the foremen and assistant foremen would be beyond the limits of the discretion vested in the Board, and an abuse of that discretion, and would be contrary to the provisions of the National Labor Relations Act and detrimental to public interest and to the free flow of commerce.

6. Because the National Labor Relations Board had no jurisdiction, power or right to institute or permit to be instituted or to take jurisdiction over the proceedings in the case entitled "In the Matter of L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter No. 155, Case No. 21-R-2816", the proceeding out of which and in connection with which and based upon which the present complaint is filed, or to issue any orders, decisions, directions or certificates in that proceeding.

430 7. Because the findings, certificates, decisions and directions issued by the National Labor Relations Board in the cause entitled "In the Matter of L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter No. 155, Case No. 21-R-2816" are illegal, unconstitutional, null and void and of no force and effect and afford no basis for the filing of the complaint in this proceeding.

8. Because the findings, certificates, decisions and directions issued by the National Labor Relations Board in the case entitled "In the Matter of L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter No. 155, Case No. 21-R-2816" are contrary to the evidence submitted in that proceeding, are beyond the limits of the discretion vested in the Board, are an abuse of discretion, and are contrary to the provisions of the National Labor Relations Act and detrimental to public interest and the free flow of commerce.

This motion is based on the records and files in this proceeding and the records and files and the briefs submitted in the National Labor Relations Board proceeding entitled "In the Matter of L. A. Young Spring & Wire Corporation and Foremen's Association of America, Chapter No. 155, Case No. 21-R-2816" and the Constitution of the United States and the laws of the United States.

L. A. YOUNG SPRING & WIRE CORPORATION
By COOK, SMITH, JACOBS & BEAKE
Its Attorneys

Address: 4200 Penobscot Building,
Detroit, Michigan

Dated: June 29, 1946

* * * * *

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Decision and Order

STATEMENT OF THE CASE

Upon a charge duly filed by Foreman's Association of America, Chapter No. 155, an unaffiliated organization herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated April 15, 1946, against L. A. Young Spring & Wire Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent, on or about March 5, 1946, and thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining

unit, although a majority of the employees in such unit, in an election conducted under the supervision of the Board on February 1, 1946, had designated and selected the Union as their exclusive representative for the purposes of collective bargaining, and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent thereafter filed its amended answer in which it admitted that on February 1, 1946, a majority of the persons in the unit described in the complaint, in an election conducted under the supervision of the Board, had affirmatively expressed their desire to be represented by the Union, and that on approximately the date mentioned in the complaint, and thereafter, the respondent refused to bargain collectively with the Union as the exclusive
435 representative of the employees in such unit; but

denied that (1) the foremen and assistant foremen are employees within the meaning of the Act, contending that they are "employers," (2) the foremen and assistant foremen constitute a unit appropriate for the purposes of collective bargaining, within the meaning of the Act, particularly Section 9(a) and (b) thereof, (3) the Union is a labor organization, within the meaning of Section 2(5) of the Act, and (4) it had engaged in any unfair labor practices, within the meaning of the Act.

Pursuant to notice, a hearing was held on May 15, 1946, at Los Angeles, California, before Victor Hirshfield, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing, the Trial Examiner ruled on various objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds no prejudicial error. The rulings are hereby affirmed.

On May 29, 1946, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, finding that the respondent had unlawfully refused to bargain with the Union and recommending that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Thereafter, the respondent filed exceptions to the Intermediate Report, a supporting brief and a supplement thereto, and a motion to dismiss the complaint. The Union has not filed any exceptions. For reasons stated, *infra*, the motion to dismiss the complaint is hereby denied. Subsequent to the issuance of the Intermediate Report, counsel for the Board moved to supplement the record by incorporating therein a stipulation embodying additional facts concerning the respondent's business. This motion is hereby granted, and the stipulation dated July 1, 1946, is hereby incorporated in and made part of the record as Board Exhibit No. 9. On July 16, 1946, the Board at Washington, D. C., heard oral argument, in which the respondent and the Union participated.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and supplement thereto, and the entire record in the case, and finds that the exceptions are without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

L. A. Young Spring & Wire Corporation, a Michigan corporation having its principal place of business at Detroit, Michigan, is the world's largest manufacturer of spring wire products, and normally supplies about 40 percent of the springs used by the automotive industry. The respondent operates numerous manufacturing plants throughout the United States and Canada, including the plant at Los Angeles, California, which is involved in this proceeding. At the Los Angeles plant, the respondent is engaged in the

manufacture and sale of automobile cushion spring constructions, inner spring mattress units, cushion pad supports, plastic parts, and miscellaneous aircraft parts. During the fiscal year ending July 31, 1942, the last year of considerable peacetime production, the respondent purchased for use at the Los Angeles plant raw materials valued at approximately \$285,451, of which approximately 38 percent was shipped to the plant from points outside the State of California. During the same period, the respondent sold products manufactured at the same plant valued at approximately \$889,400, of which practically all were shipped to customers located within the State. Although the respondent's production since the termination of the war has been very much below the pre-war normal 436 for the plant, it contemplates resumption of full peacetime production as soon as practicable. The respondent admits, and we find, that it is engaged in commerce, within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Foreman's Association of America, Chapter No. 155, unaffiliated, is a labor organization admitting to membership supervisory employees of the respondent.¹

III. THE UNFAIR LABOR PRACTICES

1. *The Appropriate Unit and Representation by the Union of a Majority Therein*

On January 8, 1946, the Board issued a Decision and Direction of Election in Case No. 21-R-2816,² finding, *inter*

¹ The respondent contends that the Union is not a labor organization within the meaning of Section 2 (5) of the Act. There is no merit in this contention. Section 2 (5) defines the term "labor organization" as meaning "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." The foremen and assistant foremen being employees within the meaning of the Act, the organization which seeks to represent them in collective bargaining relationships with the respondent is clearly a "labor organization" within the definition of Section 2 (5).

² Matter of L. A. Young Spring & Wire Corporation, 65 N. L. R. B. 298.

alia, that all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles plant constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9(b) of the Act.

On or about February 1, 1946, pursuant to said Decision and Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director for the Twenty-first Region. Upon the conclusion of the election, a Tally of Ballots was furnished the respondent and the Union in accordance with the Rules and Regulations of the Board. No objections to the conduct of the election were filed either by the respondent or the Union within the time provided therefor. The Tally showed that there were approximately 17 eligible voters, all of whom cast valid votes for the Union. On February 13, 1946, the Board certified the Union as the collective bargaining representative of the employees in the unit heretofore described.

The respondent disputes the appropriateness of the unit found by the Board on the ground that (1) its foremen and assistant foremen are not employees, within the meaning of the Act, and that, consequently, the Board is without jurisdiction to entertain any proceeding involving them, and (2) the Union is not independent of the labor organization which represents the respondent's rank-and-file employees.

In the representation proceeding,³ we considered the status of these foremen and assistant foremen under the Act and held that they were employees, within the meaning of Section 2(3), thereof. The respondent has introduced neither evidence nor argument in this unfair labor practice proceeding which, in our opinion, effectively challenges the correctness of this holding. Despite the respondent's apparent contention to the contrary, the definitions of "employer" and "employee" contained

³ Matter of L. A. Young Spring & Wire Corporation, *supra*.

in the Act are not mutually exclusive.⁴ The same individual may be an "employer" for some purposes and an "employee" for others. "A foreman, in his relation to his employer is an employee, while in his relation to the laborers under him he is the representative of the employer and within the definition of Section 2(2) of the Act."⁵ The present proceeding involves only the "employee" aspect of the foremen's relationship to the respondent. Accordingly, for the purposes of this proceeding, the foremen and assistant foremen are employees, within the meaning of Section 2(3) of the Act.⁶

The greatest part of the evidence adduced at the hearing on the unfair labor practice charges pertained to the foremen's relationship to a strike of the respondent's rank-and-file workers which commenced on April 17, 1946. The respondent relies on this evidence, together with that introduced in the representation proceeding, as proof of its contention that the Union is not independent of International

⁴ *N. L. R. B. v. Armour & Co.*, decided November 5, 1945, 17 L. R. R. 372, 373 (C. C. A. 10).

⁵ *N. L. R. B. v. Skinner & Kennedy Stationery Company*, 113 F. (2d) 667, 671 (C. C. A. 8). See also *Jones & Laughlin Steel Corp. v. N. L. R. B.*, 146 F. (2d) 833 (C. C. A. 5); *N. L. R. B. v. Armour & Co.*, supra; *N. L. R. B. v. Packard Motor Car Company*, decided August 12, 1946, 18 LRRM 2268 (C. C. A. 6); *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B. 386, and cases cited therein. Cf. *N. L. R. B. v. Atkins and Co.*, decided May 31, 1946, 18 LRRM 2092 (C. C. A. 7), where the Circuit Court of Appeals held that plant guards were not employees within the meaning of the Act. The Board does not acquiesce in that decision. Moreover, the case involved plant guards and not foremen.

⁶ In its brief, the respondent has denied the accuracy of the examples cited in the majority decision in the representation proceeding in support of the statement that the authority of the foremen is circumscribed in a number of respects. Assuming the validity of the respondent's criticism, the record nevertheless fully substantiates the conclusion that "The foreman's authority, although extensive in these many respects, is circumscribed in others." To cite other and more complete examples of limitation of authority: A foreman working overtime must secure written authorization from his immediate superior. A foreman does no interviewing or hiring of new employees, except that, in the case of certain skilled occupations, the employment manager, who usually does all the interviewing and hiring, customarily requests a foreman with the necessary qualifications to interview applicants for these skilled positions and follows the recommendation of such foreman as to hiring. The foreman does not participate in collective bargaining negotiations with the rank-and-file union, although the negotiators in behalf of the respondent solicit the foremen,—at least they did so in the negotiations that preceded the making of the last collective bargaining contract previous to the representation hearing,—for suggestions which the foremen desire to see incorporated in the contract.

Union, United Automobile, Aircraft & Agricultural Implement Workers of America, herein called the UAW, the labor organization which represents its rank-and-file employees.

Approximately a week before the start of the strike, the executive committee of the Union arranged a meeting with officials of the UAW for the purpose of learning if the UAW would permit the foremen to cross the picket line in the event that the strike of rank-and-file employees
438 then impending materialized. The UAW officials indicated that they would have no objection to the foremen's entering the plant should the strike occur. The meeting then adjourned without further discussion.

The strike of rank-and-file employees began at 9:30 a.m. on April 17, 1946, when all operations in the plant ceased. Shortly thereafter, the striking employees walked out of the plant and formed a picket line. The foremen and assistant foremen remained in the plant for some hours after the start of the strike awaiting instructions from higher officials. About noon, Horner, the respondent's factory manager, told the foremen that "if they (foremen and assistant foremen) went out to lunch and couldn't get in through the line to wait for a call, the Company would let them know when to come back." The foremen left the plant at various times after receiving these instructions and did not return either that day or the day following.

On April 18, 1946, the respondent sent a telegram to each of its foremen and assistant foremen, directing the recipient to report for work at 8 a.m. on the following day.⁷ The telegram also stated: "You will be requested by the pickets not to cross their lines but under law you have the right to enter the plant. Enter by main office door." Prior to the receipt of the telegram addressed to him, Logan, president of the Union, received a telephone call from White, president of the UAW at the plant. White informed Logan that the respondent was sending out telegrams directing

⁷ The regular shift reporting hour was 7 a.m.

the foremen to return to work. He also said that he didn't want the foremen to go through the picket line and that nothing would happen to the foremen the next day if they did go through the line, but he refused to commit himself as to what would happen thereafter.

Instead of reporting for work on April 19 as directed in the telegrams, the foremen assembled on a parking lot outside the plant at the stated hour. After some parleying with the respondent's officials, who refused to withdraw the instructions contained in the telegrams, Logan or some other official of the Union telephoned Vallance, national vice president of the Foreman's Association of America, in Detroit asking for guidance. The union officials received what they regarded as confused advice. The union officials then unsuccessfully sought to persuade the UAW to agree to allow the foremen to pass the picket line. Thereafter, the union officials, in the company of the UAW national representative who was directing the rank-and-file strike, telephoned Vallance again, but the latter was not in his office. The intended purpose of this second telephone call was to have the representative of the UAW speak to Vallance. An official of the Union then telephoned Mrs. Vallance in Detroit and had her read from the statement of policy adopted by the national executive board of the Foreman's Association on January 6, 1946, respecting the conduct to be observed by members of the Foreman's Association in the event of strikes by rank-and-file employees. Mrs. Vallance began reading this statement of policy over the telephone and, according to Logan's uncontradicted testimony, "when we came to a certain section, that is C, I believe, where it said, unless it is mutually agreed we should not go through the line, we decided then and
439 there not to go through the line."⁸ The foremen then notified the respondent that they would not re-

⁸ Section C of this statement of policy reads: "Should the striking union prevent supervisory employees from entering the plant to perform their regular work only or as provided for herein, there shall be no undue effort made by members of the Foreman's Association to enter the plant."

turn to work unless and until the respondent and the UAW mutually agreed to their crossing the rank-and-file picket line. The foremen appear to have adhered to this decision.

This evidence does not affect our finding in the representation proceeding that the Union is an independent labor organization. The refusal of one union to permit its members to cross a picket line established by another does not prove that the first union is subordinate to the second. It is almost a rule of trade union ethics for one labor union to respect a picket line established by another. Even unions affiliated with rival national labor organizations not infrequently adhere to the rule. In the first *Packard* case,⁹ we held that the Foreman's Association of America was an independent labor organization, notwithstanding that we anticipated that its members and separately organized rank-and-file employees would "express moral sympathy for the organizational efforts of one another and will, on occasion, even refuse to cross the picket line established by the other during a strike." Our conclusion in that case, that the Foreman's Association is an independent labor organization, was affirmed by the Circuit Court of Appeals for the Sixth Circuit.¹⁰ In accord with the aforesaid decision respecting the Union's parent organization, we find, as we did in the representation proceeding,¹¹ that the Union is an independent, unaffiliated labor organization organized for the exclusive purpose of representing supervisory employees. Moreover, in view of our holding in the *Jones & Laughlin* case,¹² the question of the character of the union

Section B of the same statement of policy provides: "During such a strike [an authorized strike by rank and file employees] should the company and the union by agreement permit all supervisory employees to enter the plant they may do so, but members of the Foreman's Association shall not perform any work similar to that normally performed by the non-supervisory employees on strike, and they shall perform only their regular supervisory duties except as hereinafter provided."

⁹ Matter of Packard Motor Car Company, 61 N. L. R. B. 4, 16.

¹⁰ N. L. R. B. v. Packard Motor Car Company, decided August 12, 1946, 18 LRRM 2268 (C. C. A. 6).

¹¹ Matter of L. A. Young Spring & Wire Corporation, *supra*.

¹² Matter of Jones & Laughlin Steel Corporation, 66 N. L. R. B. 386.

seeking to represent a unit of foremen has become immaterial.

We find, as did the Trial Examiner, that all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles, California, plant, constitute, and during all the times material herein constituted, a unit appropriate for the purposes of collective bargaining.

We further find, as did the Trial Examiner, that on and after February 1, 1946, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provisions of Section 9(a) of the Act, the Union was on February 1, 1946, and at all times thereafter has been, and now is, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

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2. The Refusal to Bargain

On February 27, 1946, after its certification by the Board, the Union wrote a letter to the respondent requesting the start of collective bargaining negotiations. By letter dated March 5, 1946, the respondent rejected the Union's request, giving as its reason therefor its desire to test in the courts the validity of the Board's decision in the representation proceeding. Accordingly, we find, as did the Trial Examiner, that on March 5, 1946, and at all times thereafter, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices, we must order the respondent, pursuant to the mandate of Section 10(c), to cease and desist therefrom.

We shall also order the respondent to take certain affirmative action designed to effectuate the policies of the Act. Having found that the respondent has refused to bargain collectively with the Union as the exclusive representative of the foremen and assistant foremen in the production and maintenance division, we shall order the respondent, upon request, to bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Foreman's Association of America, Chapter No. 155, unaffiliated, is a labor organization, within the meaning of Section 2(5) of the Act.

2. All foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles, California, plant, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

3. Foremen's Association of America, Chapter No. 155, unaffiliated, was on February 1, 1946, and at all times there-

after has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

4. By refusing on March 5, 1946, and at all times thereafter, to bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all its employees in the appropriate unit, the respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(5) of the Act.

441 5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, L. A. Young Spring & Wire Corporation, Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all foremen and assistant foremen in the production and maintenance division of the respondent's Los Angeles plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of Foreman's Association of America, Chapter No. 155, unaffili-

ated, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Foreman's Association of America, Chapter No. 155, unaffiliated, as the exclusive representative of all foremen and assistant foremen in the production and maintenance division of its Los Angeles plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plant at Los Angeles, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 26th day of August 1946.

PAUL M. HERZOG
Chairman

JOHN M. HOUSTON
Member

National Labor Relations Board

(Seal)

* * * * *

443 Gerard D. Reilly, dissenting:

For reasons which I stated in *Matter of Packard Motor Car Company*,¹³ I am constrained to dissent with the decision in the instant case. I should like to make one further observation.

In the *Packard* case, the majority found that the charging union in this case, the Foreman's Association of America, was an independent organization; consequently, my colleagues did not pass upon the question which was ultimately decided by the Board in the *Jones & Laughlin* case¹⁴ with respect to making the machinery of the Act available to organizations which represented both the foremen and the very employees they were hired to supervise.

It seems to me that the facts in this record¹⁵ with respect

¹³ 61 N. L. R. B. 4.

¹⁴ *Matter of Jones & Laughlin Steel Corporation*, Westa-Shannopin Coal Division, 66 N. L. R. B. 386.

¹⁵ The facts referred to are as follows: During the hearing in the complaint case there was considerable testimony taken with respect to a strike of the production and maintenance employees which commenced on April 17, 1946. The principal witness was one, Logan, president of the Foreman's Association local. The quotations given are from his testimony:

About a week before the start of the strike, the executive committee of the Foreman's Association local met with officials of the UAW-CIO local. The meeting was called at the request of Logan, because, "there had been a rumor of a strike [and] we wanted to know whether they were going to let us through the line in case they had a strike, and they said that they had no objection to our coming in the plant, and that is about all that was said there."

The strike began at 9:30 a.m. on April 17, 1946, when all operations in the plant ceased and the production workers walked out. They formed a picket line shortly thereafter. The foremen remained in the plant for some hours until about noon they had a conference with Horner, the respondent's factory manager. Horner told the foremen that "if they went out to lunch and couldn't get in through the line to wait for a call, the Company would let them know when to come back." The foremen left the plant at various times thereafter. None of them returned to work either that day or at any time during the strike.

In the evening of April 18, the respondent sent to each foreman a telegram directing the recipient to report for work at 8 a.m. on the following day. (The regular shift reporting hour was 7 a.m.) The telegram also stated "You will be requested by the pickets not to cross their lines but under law you have the right to enter the plant. Enter by main office door."

Before the receipt of the telegram addressed to him, Logan received a telephone call from White, president of the UAW-CIO local. White told Logan that the latter would probably receive a telegram requesting him to return to work. White said that he didn't want the foremen to go through the picket line, that nothing would happen to the foremen the next day if they went through the line but "after that" and he didn't finish his conversation.

The same evening Logan received a number of telephone calls from various foremen asking for advice on what to do on the receipt of the expected tele-

to developments since our certification in this case reveals that, although the charging union is nominally independent, it is subject to the discipline of the C.I.O. union which represents the production employees. The most striking instance of this was the refusal of the Foreman's Union to let its members pass the picket lines of the C.I.O. union, although the issues involved in the strike had nothing to do with the relationship between the foremen and their employer. In fact, the controversy which led to the strike related to issues in a different bargaining unit. Moreover, it will be noted that the action of the Foreman's local was in conformity with the "national policy" of the parent organization.

It has been well established (*Mackay Radio & Telegraph Co. v. N. L. R. B.*, 304 U. S. 333, reversing 92 F. (2d) 761 (C. C. A. 9), aff'g 87 F. (2d) 611 (C. C. A. 9), setting aside

grams. Logan had another official call Evans, day superintendent, and ask about the telegrams in view of the previous instructions not to cross the picket line. Evans replied that he didn't know anything about the telegrams but would find out before the foremen entered the plant the next morning. Logan then instructed his fellow foremen to meet on the parking lot outside the plant on the following morning, which they did. While waiting for a report from Evans, the foremen received from the pickets a leaflet addressed to office and supervisory employees asking these two groups of employees not to cross the picket line despite the respondent's order to return to work. Evans reported to the assembled foremen that the telegram still stood as it read.

The foremen then decided to call the national office of the FAA in Detroit for instructions and advice. Either Logan or some other official spoke to Vallance, vice president of the FAA over the telephone. Vallance told the foremen to apply for unemployment insurance and enter the plant but, "I don't think he [Vallance] understood us, and it was rather mixed up, because we could not apply for unemployment insurance and also go into the plant too." The FAA local officials returned to the parking lot after this conversation with Vallance and asked the committee of the UAW-CIO to let the foremen through the picket line. The UAW-CIO committeemen replied that they still didn't want the foremen to pass the line. The foremen then left the lot to make another telephone call to Detroit. This time they were accompanied by the national representative of the UAW-CIO who was leading the strike of the rank and file employees. The purpose was to have this representative speak to Vallance "to find out just their views on it." However, they were unable to reach Vallance. Thereupon, one of the FAA local officials telephoned Vallance's wife and had her read from the statement of policy adopted by the national executive board of the FAA on January 6, 1946, respecting the conduct to be observed by members of the FAA in the event of strikes by rank and file employees. Vallance's wife began reading this statement of policy over the phone "and when we came to a certain section, that is C, I believe, where it said, unless it is mutually agreed we should not go through the line, we decided then and there not to go through the line."

1 N. R. L. B. 201) that in an economic strike, not arising out of unfair labor practices (which was the case here), an employer has the right to replace the strikers. It is conceded that one of the duties of the foremen here was to pass ultimate judgment upon the applicants referred to them by the personnel office, in order that workmen possessing the appropriate skills be hired. Refusal of the foremen in this case to return to their posts of duty during the strike rendered this right of replacement completely nugatory.

It seems to me, therefore, this case should be dismissed and that the decision of the Circuit Court of Appeals for the Sixth Circuit affirming the Board's decision in the *Packard* case has no application here.

Signed at Washington, D. C., this 26th day of August 1946.

GERARD D. REILLY
Member
National Labor Relations Board

* * * * *

Section C reads: "Should the striking union prevent supervisory employees from entering the plant to perform their regular work only or as provided for herein, there shall be no undue effort made by members of the Foreman's Association to enter the plant."

Section B of the same statement of policy provides: "During such a strike [an authorized strike by rank and file employees], should the company and the union by agreement permit all supervisory employees to enter the plant they may do so, but members of the Foreman's Association shall not perform any work similar to that normally performed by the non-supervisory employees on strike, and they shall perform only their regular supervisory duties except as hereinafter provided."

After this telephone conversation with Vallance's wife the foremen told the respondent, through Superintendent Evans who was acting as intermediary, that they would stay out until the UAW-CIO and the respondent agreed to the foremen's crossing of the picket line. While all these events were occurring the foremen remained on or about the parking lot. They did not participate in the picket line but had casual conversation with the rank and file strikers.

Logan's attitude which is probably that of the FAA respecting the crossing of rank and file picket lines is summed up in this examination of Logan by respondent's counsel:

"Q. If they [the strikers] didn't want you to cross it you wouldn't?

A. If it meant bodily injury, no.

Q. And if it did not, you wouldn't cross the picket line either, would you?

A. No, I don't believe I would."

II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS.**CASE NO. 21-R-2816.**

2

Los Angeles, California,
Monday, May 7, 1945.

The above-entitled matter came on for hearing, pursuant to notice at 2:00 o'clock p.m.

* * * * *

9 Mr. Cook: The L. A. Young Spring & Wire Corporation hereby moves to dismiss the petition and proceedings in this case for the following reasons:

That the National Labor Relations Board and the Regional Board here involved and the Trial Examiner sitting on behalf of the Board do not have jurisdiction of the parties involved and the petition involved in the case;

10 That the foremen and assistant foremen referred to in the petition of the petitioner are within the meaning of the National Labor Relations Act and particularly Section 2(2) of the Act employers;

That the foremen and assistant foremen referred to in the petition are within the meaning of the National Labor Relations Act, particularly Section 2(3) not employees.

Trial Examiner Ryan: Not employees?

Mr. Cook: Not employees. That Congress intended the term "employee" to refer to workers as distinguished from foremen and assistant foremen referred to in the petition in this case;

That had Congress intended to include men engaged in the capacity in which the foremen and assistant foremen in this case are engaged, and the functions that they perform, that they would have so specifically included them within the definition of the term "employee" in the Act;

That in passing the National Labor Relations Act Congress did not intend to remedy the kind of situation that is present under the petition in this case, and did not intend

that the Act would apply to men serving in the capacity and performing the functions of the foremen and assistant foremen in this case;

That the foremen and assistant foremen referred to in the petition are direct representatives of the management, within the meaning of the Act. I believe that is all.

11 Trial Examiner Ryan: I will reserve your motion for the Board.

Mr. Cook: We would further like the record to show that we do not consent or agree that the bargaining unit of foremen and assistant foremen referred to in the petition are proper as a bargaining unit, or that any unit may be considered in line with our general motion to dismiss. I assume that your ruling is the same?

Trial Examiner Ryan: The same ruling. As I understand it, that is really a part of your original motion, too; isn't it?

Mr. Cook: That is right.

* * * * *

12 Trial Examiner Ryan: I propose the following stipulation:

That L. A. Young Spring & Wire Corporation is a Michigan corporation, having been incorporated on March 27, 1918, as L. A. Young Industries, Inc.; the name having been subsequently changed in March of 1928 to L. A. Young Spring & Wire Corporation.

* * * * *

That the L. A. Young Spring & Wire Corporation owns all of the capital stock of the L. A. Young Industries of Canada, Ltd., which owns all of the capital stock of its subsidiary, the Marshall Ventilated Mattress Company, Ltd.;

13 The L. A. Young Spring & Wire Corporation also owns all of the capital stock of three inactive subsidiaries which are the Detroit Wire Spring Company, the

Detroit Moulding Company, and the Star Service Hanger Company.

* * * * *

That the plant involved in the instant case is located at 3200 East Slauson Avenue in Los Angeles, California; and that is the only plant of the company which is involved in this proceeding.

It is the union's intent also that is the only plant involved; is that right?

Mr. Logan: Yes.

* * * * *

That prior to the present war the L. A. Young Spring & Wire Corporation plant at 3200 East Slauson Avenue in Los Angeles, California, was engaged in the manufacturing of automobile cushion springs;

That since the beginning of the present war the plant has been engaged in the manufacture of aircraft parts, ferry tanks, assembling of fins, rudders, stabilizers, empennages, bomb clusters for Chemical Warfare Service;

14 That the chief products purchased by the company for its plant at 3200 East Slauson Avenue in Los Angeles, California, is steel.

* * * * *

Which it purchased approximately 1000 tons per annum. That the total amount of purchases per annum is approximately \$450,000.00 of which \$350,000.00 represents purchased from outside the State of California;

That yearly sales amount to approximately \$2,351,000.00, approximately 100 percent of which is used in the war effort.

The principal customers are Douglas Aircraft Company, Inc., and Lockheed Aircraft Corporation who together purchased approximately \$1,800,000.00 worth of products per annum from the L. A. Young Spring & Wire Corporation from its 3200 East Slauson plant.

Is that stipulation satisfactory to all the parties?

Mr. Logan: Yes.

Mr. Cook: The stipulation is acceptable to the L. A. Young Spring & Wire Corporation, except I would like an understanding on the record at this time that any stipulations concerning the admission of statements, facts or exhibits in evidence are all subject to our general motion to dismiss on the ground that the Board does not have jurisdiction of the case.

15 Trial Examiner Ryan: It is so understood, Mr. Cook.

Mr. Cook: And that we may have such a ruling continue, without being repeated.

Trial Examiner Ryan: Yes.

Mr. Cook: Thank you.

Trial Examiner Ryan: I now receive the stipulation on the record, which has just been proposed and accepted by the parties.

Mr. Logan, you are a representative here at the hearing for the Foremen's Association of America, Chapter 155; is that correct?

Mr. Logan: That is right.

Trial Examiner Ryan: Reading from the petition for certification of representatives, which is in evidence now as Exhibit 1-B, the unit described therein is as follows:

"All foremen and assistant foremen of the company at its plant No. 9, located at 3200 East Slauson Avenue, Los Angeles, California."

Is that the unit you desire?

Mr. Logan: Yes.

Mr. Cook: May I ask you, Mr. Logan, if it is not correct when they refer to foremen and assistant foremen they mean the foremen and assistant foremen in the production and maintenance department of the plant?

16 Mr. Logan: That is right.

Mr. Cook: You do agree to that correction?

Mr. Logan: Yes.

Trial Examiner Ryan: I take it that you are, in effect, asking the unit be amended at this time to include the clarification Mr. Cook has suggested; is that right?

Mr. Logan: That is right.

Trial Examiner Ryan: It may be so amended. In other words, as I understand it now,—so we are perfectly clear about this unit description—you are asking for a unit composed of “all foremen and assistant foremen of the company at its plant No. 9, located at 3200 East Slauson Avenue, Los Angeles, California, who are employed in the production and maintenance division of the company’s operations at that location”?

Mr. Logan: Yes.

* * * * *

18 (The documents heretofore marked as Board’s Exhibits Nos. 2-A and 2-B, for identification, were received in evidence.)

* * * * *

20 (The documents heretofore marked as Board’s Exhibits Nos. 2-C and 2-D, for identification, were received in evidence.)

Trial Examiner Ryan: So that the record will be clear, those four letters which have been received just now bear on the question of representation principally, I believe, the demand of the union for recognition and the company’s reply and statement of position on that particular point.

* * * * *

21 **J. L. Justice**, a witness called by and on behalf of the respondent, * * *

Direct Examination

Mr. Cook: Shall I examine, Mr. Trial Examiner?

Trial Examiner Ryan: Yes.

Q. (By Mr. Cook) Your name is J. L. Justice? A. Yes, sir.

Q. You are the general manager of the Los Angeles plant that has been referred to? A. That is right.

Q. Referred to in this hearing. A. Yes.

Q. Of the L. A. Young Spring & Wire Corporation? A. Yes, sir.

Q. And the plant is located where? A. 3200 East Slau-
son, Los Angeles.

* * * * *

22 Q. (By Mr. Cook) Under you in the organization
is a factory manager? A. That is correct.

Q. And under the factory manager is a superintendent?
A. That is right.

Q. A day superintendent and also a night superinten-
dent? A. That is right.

Q. The day superintendent, as his name implies, func-
tions on the day shift, and the night superintendent on the
night shift? A. That is right.

Q. Underneath the plant superintendent are the foremen
involved in this case. A. That is right.

Q. There are, I believe, among those referred to in this
petition or in this case approximately two assistant fore-
men, or if there are more or less, say so. A. I believe there
are more than that.

Q. How many are there? A. Let me see. I will have to
name them to get them.

Q. Will you just sort of think about it, and instead of
naming them—there is no use in putting the names on the
record—if you will just take time to think it out a little bit.

A. I believe there are three or four.

23 Q. Three or four? A. Yes.

Q. And the remainder of some 22 are foremen, is
that correct? A. That is right.

Q. And the assistant foremen work under the foremen,
is that correct? A. That is right.

Q. Do any of the foremen or the assistant foremen ac-
tually perform manual duties, or is it all supervisory in
character? A. Supervisory.

* * * * *

Q. (By Mr. Cook) Now, you have told us of the organization structure as far as the plant in question is concerned, is that right, from a production standpoint? A. That is correct.

Q. There are some 22 foremen and assistant foremen in the plant; is that correct? A. That is right.

Q. The foremen in the plant are in charge of their particular departments; is that correct? A. Yes.

24 Q. And they have the responsibility for production and the operation of their respective departments; is that correct? A. That is right.

Q. Do the foremen have the right to promote employees within their departments? A. Within their departments, yes.

Q. Do they have the right to rate recommendations for promotions of employees outside of their departments? A. Yes, sir.

Q. Do the foremen have the right to discharge probation employees? A. Yes, sir.

Q. On their own, of their own volition? A. Yes.

Q. Without approval of higher management; is that correct? A. That is right.

Q. Is there any rule or regulation of the company that prevents the foremen from discharging employees on piece work or hourly rate, other than probationary employees? A. No, as long as they do it under just cause.

Q. The company has a labor agreement with the U.A.W.-C.I.O.? A. Yes, sir.

25 Q. That cover its hourly rate employees? A. That is right.

* * * * *

Q. (By Mr. Cook) I show you an agreement between the L. A. Young Spring & Wire Corporation and the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C.I.O., Local 809, affiliated with the Congress of Industrial Organizations, hereinafter called the "Union." Is that the labor contract between the

company and the U.A.W. covering the hourly rate and piece work employees of the company? A. Yes, sir, it is.

Mr. Cook: I would like to read Section 3 of the contract into the record.

Trial Examiner Ryan: Is there any objection?

Mr. Logan: No.

Mr. Cook: Article I, Section 3, under the heading "Recognition" reads as follows:

"It is mutually agreed that for the purpose of this agreement, the term employee shall not include, and that the union will not accept for membership, direct representatives of the management, such as superintendents, 26 foremen, assistant foremen, time study men, plant production employees, administrative office employees, and timekeepers who also act in a capacity of payroll clerks. Janitors shall be designated as such and shall come under the scope of this agreement."

Q. (By Mr. Cook) The agreement that I have just shown you and from which I read Section 3, Article I, is now in effect? A. That is last year's agreement which was out the first of March. We have not the new agreement as yet they propose to submit.

Q. This agreement is being carried over? A. Yes, until such time—

Q. Pending the making of a new agreement? A. Yes.

Trial Examiner Ryan: Are you in the process of negotiating a new agreement?

The Witness: We haven't received the union's demands as yet.

Trial Examiner Ryan: Do you have any knowledge whether or not the union's demands will include any changes in this particular section, recognition?

The Witness: No, sir, we do not.

Trial Examiner Ryan: You do not know that yet?

27 The Witness: No.

Q. (By Mr. Cook) Have you received any intimation to that effect? A. No, sir.

Q. From the union or otherwise? A. That is right.

Trial Examiner Ryan: How long have you been under contract with this U.A.W. Union? Is this your first contract?

The Witness: No, it isn't. I believe the first one was in 1939.

Trial Examiner Ryan: And you have been continuously under contract with them since then?

The Witness: That is right.

Q. (By Mr. Cook) Mr. Justice, what is the first step in the grievance procedure as far as grievances of the hourly rate or piece work employees in the plant are concerned?

A. The first step is for the departmental steward and the foreman to see if they can settle it.

Q. In other words, the grievance is taken up by the individual having the grievance? A. That is right, with his foreman and the shop steward.

Q. The foreman and the steward have a right to be present and participate? A. That is right.

28 Q. Does the foreman have a right to settle a grievance there? A. Yes, sir.

Q. Does he have to consult or advise with the superintendent of the plant or any of the higher management in settling the grievance that is presented to him in such manner?

A. There are times when he does, if he isn't sure of the company's stand.

Q. Is he required to? A. He is not required to. We take it for granted he knows enough about the policies to settle it so there wouldn't be any kick-back on it.

Q. Are your foremen on an hourly rate or on a salary basis? A. Both.

Q. What number of the 22 involved here are on a salary? A. 15.

Q. And seven, I take it, are on an hourly rate. A. Yes, sir.

Q. If a foreman reports late for work in the morning or at noon or leaves work early, is he docked for it? A. He is not. That is, your salaried foreman.

Q. Salaried foremen. If the foreman is off during the day on business of his own or otherwise, is he docked for it? A. No, sir.

29 Q. If a foreman is ill for an extended period, is he docked for it? A. No, sir.

Q. Do you have instances of where foremen have been off for a considerable period of time and received pay while they were off? A. Yes.

Q. Can you mention any recent one? A. Tex Hood. They tell me he just came back this morning.

He has been off how long? I will have to ask the boys if you don't mind.

Mr. Horner: Tex has been off a week.

The Witness: A week.

Q. (By Mr. Cook) What is his name again? A. Tex Hood or Gordon Hood is his proper name.

Q. His nick name is Tex? A. That is right.

Q. One of the foremen present here at the table acting on behalf of the petitioner has been off work for some time? A. Yes; Harold Fender.

Q. Harold who? A. Harold Fender.

Q. How do you spell his name? A. F-e-n-d-e-r.

30 Q. How long has he been off?

Mr. Fender: I was off a week not long ago.

Mr. Cook: On account of illness?

Mr. Fender: That is right.

Q. (By Mr. Cook) Was he or will he be docked for it? A. He will not.

Q. Do you have any other instances within the last year of foremen that have been off on account of illness? A. I am quite sure there is, but I don't know them offhand.

Q. But it is definitely a rule not to dock foremen if they report late, if they take time off during the day or if they are away on account of illness or away for other reasons; is that right? A. That is right.

Q. They are treated exactly as the general manager of the plant would be treated or the factory manager in that respect; is that correct? A. That is right, yes, sir.

Q. Is there any limitation that has ever been imposed as to the amount of time that a man may be off on account of illness? A. No, we have no limitation on that set down by the company, and we have never come to the point where we used any.

Q. You have never? A. No.

31 Q. Do you know whether you have had any long periods of extended illness on the part of foremen?

A. I don't remember of any offhand.

Q. All right. You are sure that, like in the case of the Packard Motor Car Company, for instance, where a foreman reports more than half hour late he isn't docked? A. I am sure of that.

Q. You are sure you don't do it in your plant? A. That is right.

Q. Have there been any strikes of foremen in the plant? A. No, sir.

Q. What vacation allowance of pay is given a foreman? A. Two weeks vacation is given them for anyone there over six months, which all of our men have been.

Q. Is that on a 40-hour basis or is it on a higher hour basis? A. No, it is on the same basis as the department is working at that time.

Q. The same basis as the department is working? A. That is right.

Q. What are the departments in the plant working, what hours are they working? A. 48 at the present time.

Q. The foreman is entitled to 96 hours? A. That
32 is right.

Q. Do you actually give vacations during the war period, or pay in lieu of vacations? A. We actually give vacations to the foremen and pay in lieu of vacation of employees.

Q. Pay in lieu of vacations to the employees? A. That is right.

Trial Examiner Ryan: Mr. Cook, could I ask a question?

Mr. Cook: Yes, certainly.

Trial Examiner Ryan: On these answers that you are giving about foremen, do you distinguish at all between those on hourly wages and those on a salary?

The Witness: Yes, your salaried employees, those are the ones that I am talking about.

Trial Examiner Ryan: Those are the ones you are talking about?

The Witness: Yes.

Mr. Cook: I think that is a good thought.

Q. (By Mr. Cook) Will you go to the seven who are on an hourly basis? How many of the seven on an hourly basis are assistant foremen; do you know? A. I think—

Mr. Cook: Mr. Trial Examiner, I don't assume you would mind, in order to expedite, if he could possibly off the record ask questions of someone here? I am
33 trying to prevent putting on too many witnesses.

Trial Examiner Ryan: Yes. Whenever you want to ask anybody a question ask to go off the record.

* * * * *

Trial Examiner Ryan: On the record. Your answer to that last question is two assistant foremen?

The Witness: That is right.

Q. (By Mr. Cook) What vacation allowance is given to the foremen or assistant foremen who are on an hourly rate basis as counter-distinguished from salary basis?

* * * * *

The Witness: They are paid on vacation the same as the employees.

Trial Examiner Ryan: The same as the hourly employees?

The Witness: Hourly employees, yes.

Q. (By Mr. Cook) If the foremen or assistant foremen who are on an hourly basis are off work on account of illness, do they receive their pay while they are away? A. No, they do not, unless they go off just for an hour or two and the boys gave them permission to go and
34 they come back the same day.

Q. If they do take time off during the day they are not docked for it? A. That is right.

Q. Now, if an hourly rate employee took time off during the day, would he be docked for it? A. Yes, he would.

Q. If an hourly rated foreman or assistant foreman reports late for work, is he docked for it? A. Yes.

Q. He would be? A. Yes, sir.

Q. How late would he have to be to be docked?

* * * * *

The Witness: It would be one-tenth of an hour.

Q. (By Mr. Cook) Now, do you have meetings, regularly scheduled meetings with your foremen or assistant foremen? A. Yes, we do.

Q. How often are they held? A. Once a week.

Q. Once a week? A. Yes.

35 Q. Will you tell us what you do at those meetings?

A. Yes. The first thing we usually do is to ask them how their production is coming on the main jobs and as to how we can improve those jobs. If there are any bottlenecks, what their opinion is as to the best way to break them. In general, how we could better our operations within the entire plant.

Q. Do you solicit ideas from the foremen and assistant foremen in these meetings, as to better methods and policies and procedures within their respective departments? A. That is the purpose of the meeting, because they are on the job.

Q. Are the foremen's suggestions always confined to his own department? A. No, they are not.

Q. They might be confined to other departments? A. That is right.

Q. You discuss and they assist in promulgating policies to be carried out in the operation of the departments of the plant; is that correct? A. That is correct.

Q. Whether it is in their own department or in other departments? A. That is right.

Q. When you take on a new job in the plant, do you
 36 meet with them and discuss methods, layout and
 other such items to determine how you are going to
 go about making the particular job? A. Not in all cases.
 That usually would come up at our meetings, if the layouts
 are not right. They would have an opportunity to voice
 their opinions as to whether it was right or not. And there
 are times on certain jobs when it is permissible we do, but
 that is not one hundred percent the case.

Q. The foremen then generally are treated as the man-
 agers of their particular departments; is that correct? A.
 That is right.

Q. The same as the superintendent is treated, as the
 manager of all the departments; is that right? A. That is
 right.

Q. And you, in turn, as the general manager are the man-
 ager of all the productive and other operations of the com-
 pany? A. As I explained to the boys, they are the man-
 agers of their departments the same as I am the manager of
 the plant. They report on up and I have to report on up,
 too.

Q. That is right. A. There is one other point, I do try to
 bring out at these meetings about the jobs we are working
 on, such as jobs we are quoting, you know, and the
 37 status of those and try to keep the boys up to date
 on what is taking place so far as the company is con-
 cerned.

Q. Do you know of your knowledge whether or not the
 close, intimate relation between the foremen and the super-
 intendent and the factory manager and the general man-
 ager in your plant differs from that in larger companies,
 such as the Packard Motor Car Company, for instance? A.
 I don't know. I couldn't say. I can't see where it wouldn't,
 because not working in a place like Packard I wouldn't
 know, but with the knowledge that a person has, with the
 amount of men they would have under those capacities, I
 think it would be humanly impossible to treat them as such

because I am working a lot of hours with the boys to keep them up on what is going on in a small plant like ours.

Q. In other words, due to the smallness of the plant and the fact there are very few executives above the foremen, they do take part in determining policies for operations and production; is that correct? A. That is correct.

Q. Now, do you have any cost reports or efficiency reports or expense reports that are initiated in each department through and by the foremen of the departments?

A. Yes, we have an efficiency report that is made out daily, of which a copy goes to the foremen, which gives them
38 the efficiency at which they are operating in that department. This efficiency report, the standards on this efficiency report are actually made up by the foremen and then gone over with Mr. Horner who sets the final—

Q. Mr. Horner is the factory manager? A. The factory manager. Then each month I take the departmental expense and go over it with the foremen in charge of their respective departments, the same as I do with our plant superintendent, factory manager of all the departments.

Q. What is contained in this report? Will you explain that briefly? A. It is all the direct labor, indirect labor, miscellaneous materials and lost time, lost time of all types and the labor and upkeep, maintenance of the department, the depreciation of the equipment, depreciation on the building that pertains to their department. I believe that about covers it.

Q. Are non-productive expenses also allocated to each department? A. Yes, sir.

Q. Is the foreman responsible or not for seeing that the non-productive expense is not out of relation or proportion to the productive expenses of his department? A.
39 They control that part of it.

Q. They control that? A. In most cases, I would say.

Q. The foremen and assistant foremen have the right to determine the amount of non-productive expense that their department carries? A. Yes.

Q. Is that right? A. That is right, if it is in agreement with our factory manager. But they have the control in this way, on how many people to put on to keep it up. In other words, they are responsible to keep their departments up.

Q. Is the efficiency rating and the possibility of a promotion of a foreman dependent upon his operation of his particular department as a segregated unit?

* * * * *

The Witness: Yes.

Q. (By Mr. Cook): Are these expense reports analyzed by or with the foremen? A. I personally go over it first with the factory manager and superintendent, and then with the department heads or foremen.

40 Q. When you go over the expense report with the foremen, is the factory manager or the superintendent present? A. No.

Q. You, as the general manager, analyze the reports directly with the foremen; is that correct? A. That is right.

Q. Does the foreman have a right to show why or determine why certain expenses are necessary? A. That is the purpose of going over it.

Q. That is the purpose of it? A. That is right.

Q. Whether those expenses be productive or non-productive expenses? A. That is right.

Q. I take it from that that each department is, in effect, a segregated unit in its operations to that extent. A. Yes. I might clarify that a little bit, in that our accounting department has it broken down to separate departments. We have it broken down a little finer in the plant than the accounting department can do that. There are two or three of the boys who accumulated the expenses together, such as there are 14-A and B, 12-A and B.

Q. What is 14-A and B, 12-A and B? A. 14 is the spot welding which Ray Holland and Mike Pulvino are in charge of.

41 Q. Then the foremen are responsible for the operations and costs and expenses of their particular de-

partments in the same manner that you are responsible to the head office of the company for the operations of the plant as a whole; is that correct? A. That is right.

Q. Who initiates time studies on new operations in the plant? A. The foremen do.

Q. Foremen? A. When the job is ready to time they request the time study come down and determine the time.

Q. If, when the time study is complete they are not satisfied with it, either on the basis of the standard production being set too high or too low, they have a right to raise objections to it? A. They do.

Q. It is fully discussed with them, is it, with the foremen? A. That is right.

Q. From the time study and their discussions the standards are set; is that correct? A. That is right.

Q. Are the time studies often changed to meet the ideas of the foremen?

* * * * *

42 The Witness: Yes.

Q. (By Mr. Cook) The production that you are now engaged in in the war effort, I assume, is quite dissimilar to the production that you had in peace time? A. It certainly is.

Q. The setting of standards on the new items, I assume, therefore, are considerably more complex and less definite than they would be on your peace time products. A. Yes, sir.

Q. In those matters, as you stated, the foremen— A. We have to depend largely upon the foremen.

Q. You have to depend largely upon them. Whose responsibility is it to see that the employees, hourly rate and peace rate employees meet the production standards? A. The foremen.

Q. The foremen? A. Yes.

Q. It is solely their responsibility; is it not? A. That is right.

Q. Do the foremen have anything to do with safety equipment or procedure in the plant? A. They do.

43 Q. What do they do? A. They are charged with the responsibility of keeping their department in safe work order. They will have a meeting once a month with our factory manager. He has a meeting with all the foremen once a month and before the meeting, why, a committee goes around and inspects all the departments.

At that meeting they determine what should and what shouldn't be done regarding these items that are brought up by the inspection department.

Q. Their determination is final; is it? A. It has been.

Q. How long have you been with the company, Mr. Justice? A. Since August, 1925.

Q. Did you start with the company in a supervisory capacity? A. No, sir, I started in a millwright capacity.

Q. Millwright capacity? A. Yes.

Q. And you have progressed to the position of general manager of the Los Angeles plant; is that correct? A. That is right.

Q. You know Mr. Ely; do you not? A. Yes, sir.

44 Q. He is sitting here in the room? A. Yes.

Q. He is the general production manager of all the plants of the company in the United States and Canada; is that right? A. Yes, sir, that is right.

Q. Do you know whether or not he started with the company in a supervisory capacity? A. No, he did not.

Q. Where did he start? A. In the Marshall department.

Mr. Ely: Time department.

The Witness: Time department. It is just the last two years I have worked with him very closely.

Q. (By Mr. Cook) The factory manager is Mr. Horner; is it? A. Yes, sir.

Q. Do you know when he started with the company? A. No, I don't.

Q. We will find out from Mr. Horner. A. He has been with them quite a while, I know that.

Mr. Cook: I don't believe I have any other questions. Do you, Mr. Trial Examiner?

Trial Examiner Ryan: Yes, I would like to ask a few.

Q. (By Trial Examiner Ryan) Mr. Justice, why is it that some of the foremen are paid on salary and some on
 45 hourly? A. What is the company's policy in that regard? What is the reason for it? A. The salary employees are usually the older employees, and also the job which they hold.

Q. Is there a difference in the degree of responsibility of a salaried foreman and an hourly paid foreman in your plant? A. No, I wouldn't say there is.

Q. Is there any distinction at all in the functions of the foremen who are paid by the hour and those paid by salary, other than the manner in which they are paid, would you say? A. No.

Q. The only reason that some are paid on an hourly basis is they haven't been there as long as the others; is that right? A. That or the job which they hold.

Q. Would you explain that a little more? What do you mean by that? A. Well, we start out with an hourly foreman and then as time goes on he is eventually pushed over to a salary, according to the conditions that exist at the time.

Q. Are each of these hourly paid foremen the head of a department, or are they working in a department that has a salaried foreman, also? I am thinking now of
 46 these seven hourly paid foremen, which, of course, include two assistant foremen.

Mr. Cook: I think that was three or four assistant foremen; wasn't it?

The Witness: No, we finally decided on two. I only see two here that do not have a salaried employee above them, which are Frank Kaltenberger and Warren Logan.

Mr. Cook: In what department are they?

The Witness: Millwright and machine shop.

Q. (By Trial Examiner Ryan) Do you know whether all together, Mr. Justice, the 22 supervisory employees are in the category of foreman and assistant foreman? 20 of them are foremen, isn't that right, and two are assistant foremen? A. That is right.

Q. You do not have that many departments, however, do you? A. No.

Q. About how many departments do you have in your production and maintenance division? A. There are nine.

Q. Do you operate those departments three shifts? A. No.

Q. Just two shifts? A. Part of them one.

47 Q. So the record will be clear, with nine departments how are these 22 supervisory people distributed among them?

Mr. Cook: Mr. Trial Examiner, I rather think that possibly the factory manager could probably give us quicker and better answers on that.

Trial Examiner Ryan: All right.

The Witness: There are two in one department. I would only be too glad to turn it over; he probably could.

Q. (By Trial Examiner Ryan) If you would rather he would, I will wait and ask him those questions. I would like to ask you a couple of other questions. Do you sit in on the negotiations with this U. A. W. Union for the hourly paid employees? A. Yes, sir.

Q. In those negotiations which have taken place in the past, have the foremen, any of these foremen that we are talking about in this case, ever sat in on the negotiations on behalf of the company? A. No.

Q. Did you ever consult with the foremen prior to preparing the company's program to enter into these negotiations with this U. A. W. Union? A. This last year is the first year that I sat in. During that time I took over
48 just at the time we were negotiating that, and all during our negotiations, which were strung out for quite a while, we were constantly in touch with the different foremen on the different phases of it.

Q. What would be the nature of your contact with the foremen in relation to these negotiations that you were having? What would be the type of information you would be getting from them or discussing with them? A. On

what they would like to have us get into the contracts, providing we could; suggestions as to what should be done.

Q. Do these foremen or assistant foremen do any hiring at your plant? A. No. They request the number of men they want and the employment manager actually does the hiring.

Mr. Cook: Pardon me, Mr. Trial Examiner. Do you mind asking why that is?

Trial Examiner Ryan: No.

The Witness: Because we couldn't have all of our foremen hiring and losing that time interviewing these men and writing them up, with all the different forms with which we are required to fill out to the government.

Mr. Cook: Isn't it also true that it goes to the employment office in order that the employment office may know whether or not there are men available on other jobs that can be relieved for the job?

49 A. That is correct.

Mr. Cook: I am sorry, Mr. Trial Examiner.

Trial Examiner Ryan: That is all right.

Q. (By Trial Examiner Ryan) Who does the hiring then? A. Mr. Martindale.

Q. He is the personnel manager? A. That is right.

Q. Mr. Justice, at this location of 3200 East Slauson Avenue, would you give us a brief description of the plant facilities? That is, tell us whether there is one building there or two buildings or more, and the approximate size of them, and so on. A. Yes. It is one building. The factory part is 250 x 400 feet, a total of 1000 square feet in the one room. The office is connected with it in front. It has 4600 square feet, 2300 on the first floor and 2300 on the second floor.

Q. Is it a 2-story building? A. The office part is. The factory is a 1-story building.

Q. All of the production employees work in one room, then, one part of the plant; is that right? A. That is right.

Q. Is that divided in any way by partitions? A. No, it is not.

Q. But the various operations are divided into departments; is that right? A. That is right. They are
50 segregated as to the different parts of the plant.

Q. Different types of machinery that go into the various departments? A. That is right, such as the press department. That contains all the presses. And spot welding, that has the spot welding and so forth.

Q. In that production and maintenance part of your plant, is there any other part of the company's operations conducted there, other than the actual production and maintenance? Do you have any laboratories there? A. No.

Q. Is any experimental work carried on there? A. We do some experimental work.

Q. Do you have an engineering division that spends its time drafting and blueprinting, and so on? A. Yes, we do.

Q. Is that also segregated from the production and maintenance part of the plant? A. The engineering is on the second floor of the office building, with one exception. We have an experimental engineer down on the floor next to the machine shop, in a room at that location.

Q. Now, with respect to these classifications of employees that the petitioner is seeking in this case, that is, the
51 foremen and assistant foremen in the production and maintenance division of your company's operations, are there any supervisors in your other operations in that same plant, such as in your engineering room or in your offices— A. Yes, sir.

Q. —where the supervisors are on the same level of authority as the supervisors are out in the production and maintenance division? A. Yes.

Q. Would you tell us which department you have in mind and what you call the supervisors there? A. The production control.

Q. What do you call the man in charge of production control, foreman? A. Well, he is just in charge of production control.

Q. You don't call him a foreman? A. Supervisor of that department.

Q. Is his status equivalent to the status of a foreman out in the production and maintenance division? A. I would say it was.

* * * * *

52 Q. (By Trial Examiner Ryan) I will ask you another question or two, and then we will excuse you.

Is there any classification of supervisor in the production and maintenance division lower in grade than the assistant foremen we have talked about here? Do you have any such things as a leadman, for example? A. No.

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Q. (By Trial Examiner Ryan) That is where your difference of supervision ends; is it? A. Yes.

Q. Is with the assistant foremen? A. Yes.

Q. From there on down it is production and maintenance employees? A. Yes, that is right.

Q. Now, in these foremen meetings that you have, how often did you say you had them? A. Once a week.

Q. Are those meetings held by divisions, that is, when you have a foremen's meeting for your production and maintenance division, do you confine that only to foremen and assistant foremen working in that division, or do you mix, for example, a production control supervisor
53 into that meeting? A. Very seldom he is ever there.

Q. In other words, it would only be the unusual situation to have him in with your foremen and assistant foremen of the production and maintenance? A. That is right.

Q. That would also be true, would it, of your other departments, such as your office and laboratory or experimental departments? A. That is right. It would be unusual if we have them.

Q. In other words, the relationship between the departments is such there wouldn't be a community of problems between the foremen and assistant foremen in the production and maintenance division with the supervisors of the other departments? A. No.

Q. There wouldn't be such a community of interest of problems you would have them all in together as a regular thing; is that right? A. That is right. We have not had that type of problem arise. Therefore, we have not had them together.

Mr. Cook: May I ask a question on that subject?

Trial Examiner Ryan: Yes.

Mr. Cook: Does the engineer, head of the engineering department, attend these meetings of foremen?

54 The Witness: Yes.

Mr. Logan: I wonder if I could ask a question there, too.

Trial Examiner Ryan: Yes.

Mr. Logan: Isn't it true we did not have these meetings until after you received the first letter I sent to the company?

The Witness: That is true; weekly.

Mr. Cook: Did you have them on some other time before that?

The Witness: Our factory manager usually combined them with the safety meeting.

Mr. Cook: How often?

The Witness: Monthly.

Mr. Cook: Monthly, instead of weekly?

The Witness: Yes.

Mr. Logan: Isn't it true that these meetings are held after hours, that is, after the shop closes?

The Witness: That is right, between shifts.

Mr. Logan: You mentioned that no other person comes in there except just the foreman of the plant. You also have a tool engineer that comes in there?

The Witness: You are right.

Mr. Logan: And a superintendent?

The Witness: Well, naturally, anyone over this group.

55 Mr. Logan: On the matter of, going back to the matter of grievances, isn't it true that when a fore-

man gets a grievance from a steward, if he can't settle it in his department, he signs the grievance and it goes on into the office, and from there on a foreman doesn't have anything more to do with it, unless he is asked about it? But he is not in the meetings to settle it?

The Witness: That is right.

Mr. Logan: Isn't it true that you said that in regard to hourly and salaried employees that the hourly were eventually brought up to salary?

The Witness: I said usually.

Mr. Logan: There are several that have been in the plant a long time and haven't been brought up to a salary yet.

The Witness: I don't know how to answer that.

Mr. Cook: Would you mind repeating the last question, please?

Trial Examiner Ryan: Read the question.

(The question was read.)

Mr. Cook: Can you answer that?

The Witness: I don't believe I can.

Mr. Cook: We will try to get that out of one of the other witnesses, Mr. Logan, if you care to.

Mr. Logan: All right, that is all I have.

56 Mr. Cook: There is one other question, Mr. Trial Examiner, if I may ask.

Trial Examiner Ryan: Yes.

Q. (By Mr. Cook) Can you tell me what the rates of compensation are, the high and the low, among the group here involved, the foremen and assistant foremen for the year 1944? A. If I could see my papers.

Mr. Cook: I am sure the Trial Examiner won't object.

Trial Examiner Ryan: No.

The Witness: The high on the salary for the fiscal year 1944 was \$5,183.74. The low on the salary was \$4,007.04.

Q. (By Mr. Cook) Do you know whether the low is a new or old man? A. He is one of the older ones. He came down from Oakland.

Q. He worked for a full year? A. That is right.

Q. Go ahead. A. The high on the hourly rate foreman was \$6,161.51.

Mr. Logan: That is not really salary, though, that includes the overtime.

The Witness: That is what we paid.

Mr. Logan: That is what you paid?

57 The Witness: That is right. The low on the salary, who put in the full year, was \$4,059.02.

Q. (By Mr. Cook) You mean low on the salaried? A. Hourly rate.

Q. On the hourly rate. A. Yes.

Mr. Cook: I think that is all.

Q. (By Trial Examiner Ryan) Mr. Justice, your hourly paid employees, that are under contract with the U. A. W. at the present time, are paid overtime after a certain number of hours; isn't that right? A. That is right.

Q. Your hourly paid foremen, are they also paid in the same manner? A. The same manner.

Q. For overtime? A. The same manner.

Q. But your salaried foremen are not paid overtime; are they? A. That is right.

Q. Even if they work, say, 20 hours more per week than a regular work week, would they receive any additional pay?

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58 The Witness: There is one thing that should be brought out, and that is on our salaried employees. We do pay extra time for Saturdays and Sundays.

Trial Examiner Ryan: On your salaried employees?

The Witness: Salaried employees.

Trial Examiner Ryan: Are there any further questions?

Mr. Cook: There is one other question. Do you know, or would someone here know better than you the basis upon which the vacation to the hourly rated and piece work employees is paid?

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The Witness: On the piece work employees they were paid a percentage of their standard rate of pay. In other words, they were paid an average rate.

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59 **Neil D. Ely**, a witness called by and on behalf of the respondent, * * *

Direct Examination

Q. (By Mr. Cook) Your full name is what? A. Neil D. Ely.

Q. You are from Detroit, Mr. Ely? A. That is right.

Q. What capacity are you in with the L. A. Young Spring & Wire Corporation? A. General production manager of the corporation.

Q. Were you ever the general manager of the Los Angeles plant of the company? I was.

Q. From when to when? A. From approximately December 1, 1943, to May, 1944.

Q. You have been the general manager of other plants of the company? A. I have.

Q. The Trenton plant and Chicago plant? A. That is right.

Q. How long have you been with the company? A. 22 years.

Q. In what capacity did you start? A. Timekeeper.

60 Q. Did you work in different capacities up to your present capacity? A. Various capacities.

Q. Manual work and so forth? A. Not exactly manual labor, but various capacities, assistant foreman, foreman, superintendent, sales, sample room.

Q. Do you know what the policy of the company is with respect to promoting or in choosing superintendents, factory managers, general managers of plants and on up to the top of the executive staff? A. I do.

Q. Will you tell us what it is? A. All these various men, superintendents, factory managers and so forth, and various men are chosen for their ability to do the job and do

the job properly. We do have possibly the unusual condition in our corporation that the top men in the whole organization, outside of, I believe, one, have been men who have risen from the ranks.

Q. From the ranks of workmen on up through the supervisory staff? A. That is right.

Q. You say there is one exception. A. The one exception I can think of offhand is our controller.

61 Q. Your what, controller? A. Controller, yes.

Q. Mr. Ely, are you familiar with the organization here in Los Angeles? A. Basically, I am, yes.

Q. You left here in May of 1944? A. That is right.

Q. Have you had any part in attempting to secure increased wages or overtime for salaried foremen? A. I have.

Q. In the Los Angeles plant alone? A. The corporation.

Q. Throughout the United States? A. That is right.

Q. Will you tell us a bit about what was done in that? A. Yes. About a year ago, when I finally went back to Detroit, we started negotiations with the Treasury Department on the possibility of trying to obtain time and a half payment for all supervisory employees over 40 hours. The Treasury Department at that time rejected that, but in negotiations over the period of this last year we were finally able to work out a plan where we could partially pay supervisors for over time, based on overtime with departmental overtime, such as 48-hour week, 54-hour week or 60-hour week.

62 Q. This plan was the best plan you were able to put into effect? A. It was the best plan we were able to obtain from the Treasury Department.

Q. The Stabilization Board of the Treasury Department? A. That is right.

Q. You say you worked on it approximately a year? A. Practically a year.

Q. Before you were able to get this plan? A. Yes.

Q. Has that plan been put into effect? A. That plan was just recently put into effect.

Q. You have heard the testimony here of Mr. Justice. Have you any points you can think of you would like to supplement or clear up in any way? A. There is one point I believe the Trial Examiner mentioned, and that was the question on those employees that are on an hourly rate against those on salary. I am not a hundred percent familiar with the employees here at the Los Angeles plant at the present time, but in the past it has been more or less a practice that those employees are foremen on an hourly rate and have been maintenance department, shipping department or stores. I don't know whether there is any exception at the present time to those employees. Usually those employees, due to the fact their hours were so uncertain, the amount of overtime due to the fact we couldn't fairly pay them according to our salary stabilization plan, it was advised at that time to leave them on an hourly basis.

Q. Has it been the request for that to go in on a salary basis? A. I believe in some cases there has been; I am not too familiar with them.

Q. They are paid overtime? A. They are.

Q. Do the hours they spend exceed the hours that the foremen generally spend? A. As a general rule I would say yes.

Q. Because of the fact that they are paid time and a half for overtime over 40 and spend more hours, their vacation privileges are not quite as large as the vacation privileges of the salaried foremen; is that right? A. I would say yes.

Q. Also, they are not permitted the whole leeway of being able to take time off and so forth to the extent the salaried employees are and still paid as salaried foremen are? A. That is right.

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64 Q. (By Trial Examiner Ryan) Mr. Ely, with reference to these assistant foremen, I believe there are two of them, how do they function? Do they take the place

of a foreman when he is absent or do they assist him while he is there on the job? A. I am not too familiar with the Los Angeles plant, but the ordinary practice is the assistant foreman helps the foreman in functioning and to perform his duties. In the absence of the foreman he would take over that department.

Q. Where you have an assistant foreman, who is acting on the job when the foreman is there, does the assistant foreman devote all his time to supervising or does he do part manual labor, also? A. Never manual labor.

Q. He never does?

Mr. Cook: May I ask one question? That is true of the foremen, too, generally?

The Witness: That is right.

Mr. Cook: None of them do manual labor?

The Witness: Our union contract with the C. I. O. do not allow the foremen to do actual manual labor.

Mr. Cook: And they do not?

The Witness: That is right.

65 Q. (By Trial Examiner Ryan) Have you ever had a strike at the Los Angeles plant here at 3200 East Slauson since this present union is in there, the U. A. W.? A. You mean the men themselves?

Q. Yes. The production men. A. I believe there was. I am not too familiar with that. Was there a strike, Mr. Justice?

Mr. Justice: No, not that I know of.

Q. (By Trial Examiner Ryan) There has been no strike? A. No strike.

Q. Briefly, could you tell us the names of the various departments in your production division here at the Los Angeles plant? A. I am not too familiar with the departments at the present. They have been changed considerably since I was here a year ago.

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Q. (By Trial Examiner Ryan) As I understand it now, Mr. Ely, the fundamental reason for paying some of the

foremen on an hourly basis, rather than a salary basis, is because the departments that they are supervising function in such a manner it is hard to operate them under a set schedule of so many hours per week? There are occasions when they have to work long hours; is that right? A. That is generally right, yes.

Q. You felt in order to be just with them, as opposed to the other foremen who could work steady, a steady set number of hours, you would have to pay them by the hour so they wouldn't be working more for the same amount of money? Isn't that the idea? A. That is right, along that line. That was the reason we were attempting through the Treasury Department to get this basis where we could pay all supervisory help on extra time.

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Cross Examination

Q. (By Mr. Logan) Isn't it true that if you did pay on some of these hourly foremen a salary that you would have to pay—I wouldn't say you would have to—it would really upset your salary structure of those above— A. It is possible, due to the fact of the hours, yes.

Mr. Cook: Will you repeat the question?

(The question was read.)

The Witness: In other words, do you want me to interpret what he means?

Mr. Cook: Yes.

67 The Witness: What Mr. Logan is after, I believe, is a question of comparison between the salary employees and the hourly rate employees, the question whether we paid some of the present hourly rate employees, that their base salary structure would not be in line with some of the other salaried employees.

Mr. Cook: Are you talking about employees or foremen?

The Witness: Foremen.

Mr. Cook: It still isn't clear to me.

Trial Examiner Ryan: Now, will you explain that a little more?

The Witness: Maybe Mr. Logan had better explain it himself, if I haven't it right.

Q. (By Mr. Logan) Well, if they had to pay a foreman on an hourly rate for the amount of hours he is putting in and for the kind of work he is doing, if they had to pay him a salary it would upset the rate structure of salaries of men that are really over that foreman? Isn't that right?

The Witness: Do you have that clarified in your mind, now, Mr. Cook?

Mr. Cook: I haven't it clear in my mind yet.

Trial Examiner Ryan: I wonder if I understand what you are driving at, Mr. Logan. Some of these hourly paid foremen, as I understand it, have made as high as
68 \$6000.00 a year; isn't that right?

The Witness: Yes.

Trial Examiner Ryan: If I understand Mr. Logan correctly, if you adjusted the man's salary who had earned \$6000.00 on an hourly basis, if you adjusted his hourly income to a salary basis you would have to pay him, say, \$6000.00 salary per year.

The Witness: Yes.

Trial Examiner Ryan: And that might mean he was drawing more per year than now being paid on a salary for someone on the scale of supervision in the company higher than he; is that right?

Mr. Logan: That is right.

The Witness: As I explained before, the reason is these men are working longer hours. That is the reason.

Q. (By Mr. Logan) Would it be that the company pays them an hourly rate so that they will work these longer hours? A. So they will work these longer hours?

Q. Yes. A. Not necessarily so they will work the longer hours. I think from past experience, to warrant that, it would be necessary for you to work those longer hours.

Mr. Cook: By the way, may the record show you are an hourly rated foreman?

69 Mr. Logan: Yes.

Mr. Cook: In fact, I think you are the \$6,000.00 man; aren't you?

The Witness: That is right.

Trial Examiner Ryan: Do you have any further questions, Mr. Logan?

Q. (By Mr. Logan) Haven't you tried to put some of these hourly foremen on salary? A. So far as to that I can't answer too clearly. Mr. Justice is probably in more of a position to answer that. As I say, I haven't been here in the last year.

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Trial Examiner Ryan: I would like to ask you a question.

The Witness: Surely.

Trial Examiner Ryan: Approximately how many employees would each of these foremen have under them in their departments?

The Witness: That again, I am not in a position to answer. I think the production manager could give you a better answer to that.

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70 **Cyrus Horner**, a witness called by and on behalf of the respondent * * *

Direct Examination

Q. (By Mr. Cook) Will you give your full name to the reporter? A. Cyrus Horner.

Q. Mr. Horner, how long have you been with the L. A. Young Spring & Wire Corporation? A. Since July, 1928.

Q. What capacity did you start in? A. The bottom rim department.

Q. Mr. Horner, your present capacity is factory manager of the Los Angeles plant? A. Yes, sir.

Q. When you started in the bottom rim department, that was manual labor; was it not? A. Yes, sir.

Q. You progressed up to your present position? A. Yes, sir.

Q. The Trial Examiner had a number of questions. I believe I will turn you over to the Trial Examiner
71 and see if we can't straighten out some of the things he hasn't been able to get.

Q. (By Trial Examiner Ryan) I wonder if you would outline the various departments in the Los Angeles plant and tell us how many foremen there are in each of those departments and approximately how many men they supervise? Would you do that briefly? A. We have the department 14, which is spot welding department.

Q. Department 14? A. Department 14. We have one foreman there.

Q. Is he a salaried foreman? A. Yes, sir. We have 14-A, which is assembling of Lockheed parts. We have one foreman there who is on salary.

Q. Have you any document with you that outlines those departments that would help you in your recollection of them? A. Yes.

Trial Examiner Ryan: Is there any objection to the witness looking at that to facilitate his testimony in this regard?

(No response.)

The Witness: I don't have most of the departments, but I think we can handle it. We have the press department,
11. We have a foreman on the day shift, on salary. We have one on the night shift on salary.

72 We have Department 12, which is fabrication of Lockheed parts. We have one foreman on the day shift who is salaried.

We have a Department 12-B, constellation department.

Q. Is that for the constellation of airplanes? A. Yes. We have one foreman there who is on salary.

We have Department 12-C, which is the repair department. We have one foreman there who is on salary.

We have Department 16. We have one salaried foreman there.

We have the shipping and receiving department, 43. We have one hourly rated foreman on the day shift, one assistant foreman.

Q. Is he on an hourly rate? A. Yes, they are both on hourly. We have Department 14-B which is the paint and pack; one foreman on the day shift on salary. We have one foreman on the night shift who is on salary. That takes care of that department. Also, the shipping and receiving and arc welding.

Q. Does the day foreman take care of that, too? Does the day foreman take care of the shipping and receiving? A. Just the shipping and receiving, that is right.

Q. The night foreman has additional duties then over the day foreman; is that right? A. That is correct.

Q. I suppose that is because at night he doesn't
73 have quite as much to do and his department has the time to look after it. A. Very few employees on the swing shift.

Q. Whereas, in the day time, you have a foreman in each of those departments? A. Yes, sir. We have Department 13, arc weld department. We have one salary foreman. We have machine shop, Department 41; one hourly rate foreman.

We have Department 42, millwright department, one hourly rated foreman. We have Department 42-A, electrical maintenance; one salaried foreman.

We have Departments 15 and 15-A inclusive. We have two salaried foremen. We have the inspection department, with one foreman on salary; one foreman on the night shift who is an hourly rate employee, and assistant inspector on the day shift, who is hourly rated. I think that covers all the departments, all but the stores. We have the supervisor of stores, which is an hourly rate. I think that covers all of them.

Q. Does that supervisor of stores have anyone working under him? Does he have employees working under him?

A. Very few. He does all the purchasing—Well, not the purchasing. He writes up the requisition to purchase items.

74 Q. (By Mr. Cook) Mr. Justice, in answer to a question of the Trial Examiner, you talked about the production control department, and I believe described someone in there as the supervisor of it, or something. Will you explain that department to us, please? A. He is classified as order and schedule man.

77 Q. In other words, his functions are not strictly a part of the production division, production and maintenance division of the plant? A. Well, his duties are to list the quantities and the part numbers on various jobs, so the foremen will know what particular jobs to run and the schedules they have to meet.

80 **Wayman R. Martindale**, a witness called for and on behalf of the respondent * * *

Direct Examination

Q. (By Mr. Cook) State your name. A. Wyman R. Martindale.

Q. Mr. Martindale, you are the head of the personnel department of the plant? A. Yes.

Q. And under your direction and supervision is the hiring of employees of the plant? A. Yes.

Q. Would you briefly explain to us the procedure that is followed, please. A. The hiring procedure alone?

Q. Pardon? A. The hiring procedure?

Q. Yes, as briefly as you can. A. Of course, I do all the hiring for the productive and non-productive departments and the clerical help. I do all the interviewing with the exception of some of the more skilled departments, of which is the machine shop. I call in the machine shop foreman to

interview those men, because he is more familiar with
81 the abilities of good machinists than I am. He can
interview the man, I think, a little better. He knows
what his duties should be, and I feel he can get a better
man than I might.

Q. The foreman of the machine shop department, in effect, does hire his own men? A. Yes.

Q. Are there any other departments? A. I have called in, also, the maintenance foreman, Mr. Kaltenberger. I called him in to interview the maintenance men.

Q. He determines who will be hired? A. Yes. I have also called in Mr. Fender to interview a welder and maintenance man.

Q. Mr. Fender is here in the room? A. Yes.

Q. He is the foreman of the welding department? A. Welding maintenance.

Q. Welding maintenance? A. Yes.

Q. Are there any others? A. I have also called in Mr. Schwartz, who is in charge of the arc and gas welders. They are all certified welders, and he can tell a certified man and what he is able to do.

Q. In other words, the foreman actually employs, through the procedure you have mentioned, employees that
82 are skilled, in effect. A. Yes.

Q. Or require skill? A. Yes.

Q. You hire the normal run of laboring people? A. Yes, that is right.

Mr. Logan: Could I get that a little clearer? Isn't it true we can come into interview a man that you have found, and after we have interviewed them, then we recommend that you hire them?

The Witness: Well, yes, on your recommendation I hire the man.

Q. (By Mr. Cook) You accept the recommendation of the foreman? A. Yes.

Q. You do? A. Definitely.

Q. In all instances? A. Yes.

Trial Examiner Ryan: In other words, if after they have been interviewed by the foreman and he decides the man wouldn't be qualified, if he recommended that you not hire him, you wouldn't hire him; would you?

The Witness: I certainly would not.

83 Q. (By Mr. Cook) And do not. A. No.

Mr. Cook: I have no further questions.

Cross Examination

Q. (By Mr. Logan) Wouldn't you say a foreman definitely does not hire the man then, he only recommends?

A. I hire the man on your recommendation. If you should say, no, he is not a machinist, I wouldn't hire him.

Q. Haven't there been times when a foreman has put in a requisition for a man when you have not hired him, because of the fact that the office said no? A. I can think of only one instance, yes.

Mr. Cook: One instance?

The Witness: Yes.

Mr. Cook: Will you explain that one?

The Witness: Well, Mr. Horner, who is the production manager, thought we had enough men at the time and didn't need another machinist at that time. However, we did hire that man later, or a man to fill that particular position.

Mr. Cook: Was that the only instance you can think of?

The Witness: That is the only one I can think of.

Mr. Cook: Where you haven't accepted the recommendation of the foreman on either hiring or not hiring?

The Witness: That is right.

Mr. Cook: You have simply done the paper work on it in getting the man employed.

84 The Witness: That is right.

Q. (By Mr. Logan) Doesn't the management, in other words, the manager have to O. K. the hiring of a man in any department? A. Pardon?

Q. Doesn't he have to O. K. the hiring of a man for any department? A. No.

Mr. Fender: I believe he has in all my cases had to O. K. it.

The Witness: Of course, he knows at all times how many men we need in each department.

Mr. Fender: Another question. When a person is in need of a man he has to go through management before he can get one. He can't get it on his own recommendation, or at least that is what I think.

The Witness: There is only one case I know of where he hasn't.

Mr. Cook: That is the one you referred to?

The Witness: That is right.

Mr. Cook: That is the only one?

The Witness: That is the only one.

Mr. Fender: I think I had a request in for a man for a period of two months or better and never could get one. Is that right?

The Witness: We got one when we could

85 Mr. Fender: Not at that time. You could have gotten one.

Trial Examiner Ryan: Let's not argue with the witness.

Mr. Cook: I would like to say that is a bit of a conclusion. You stated, as I understand it, you couldn't get a man at that time to fill the particular job that was needed?

The Witness: That is right.

Mr. Cook: Because of the shortage.

The Witness: I couldn't find a skilled man.

Mr. Cook: As soon as you did, he was hired; was he?

The Witness: Yes.

Q. (By Mr. Logan) When a foreman comes in and asks you to hire a man, what is the exact procedure you go through to hire that man? A. We simply hire the man, with the exception of those skilled men that I spoke of.

Q. You hire a man without the management's consent?

A. Yes, definitely.

Q. In any department? A. That is right.

Q. Even if you question that the department is full and doesn't need a man? A. In every case I have asked Mr.

Horner how many men he needed in the departments.

86 I have an order book that I keep them in, that we leave on order.

Q. In other words, you have a certain stipulated amount of men for each department? A. That is right.

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Trial Examiner Ryan: What is your title with the company?

The Witness: Personnel and labor relations manager.

Mr. Cook: That is all.

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90 Los Angeles, California,
Tuesday, May 8, 1945.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock A. M.

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94 Mr. Cook: Mr. Trial Examiner, we would like to correct slightly the testimony of Mr. Martindale, the last witness yesterday. If I may be permitted to do so, I would like to, as counsel.

Trial Examiner Ryan: Yes.

Mr. Cook: Mr. Martindale, to my recollection, testified in effect that foremen could come to him directly as personnel director and he would hire the men they wanted hired. Then he went on to testify to the fact that in the case of skilled help that they actually selected them, and there was only one instance he knew of where the man had not been hired at that time; as I recall the testimony is clear on that. Anyway, I don't want to change that in any way.

I want to state I understand, after going into the matter more thoroughly, the procedure on hiring is something like this: The foremen determine if they need additional

95 men for their particular departments, and then that

is usually presented to the superintendent of the plant. The superintendent, if he feels that the men are not required, although it is seldom there is any change made in it, he would have the right to say they should not hire extra men. It is largely cleared through the superintendent of the plant in order that men available possibly in other departments for the particular job may be transferred to the department.

In a case where the foreman and the superintendent disagreed—although we have no instance of it—that additional men were not required in a given department requested by the foreman, undoubtedly that would be settled by the factory manager. That is all.

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96 **Waymon R. Martindale**, a witness called by and on behalf of the Trial Examiner, having been previously duly sworn, resumed the stand * * *

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Direct Examination

Q. (By Trial Examiner Ryan) Mr. Martindale, when a foreman is needed, when you need to employ a foreman, who has the duty and the authority to hire a foreman? A. The production manager.

Q. The production manager? A. Yes, Mr. Horner, plant manager.

Q. Now, if you decide to transfer a foreman from one department to another department, who would have that authority? A. He also does that.

Q. He does? A. Yes.

Q. If a foreman were to be discharged for any reason, would this production manager also do that? A. Yes, that is true.

97 Q. He would have that authority? A. Yes.

Q. Who determines the salary that a foreman is to receive when he is employed? A. That is also his—

Q. The production manager? A. He also determines his salary, yes.

Q. Who determines whether or not the foreman is to work beyond the regular work week? What is your regular work week, 48 hours? A. 48 hours, yes.

Q. If the work requires the department be kept operating, say, 56 hours, who would determine he is supposed to remain on the job and keep it running? A. Usually the plant superintendent. He, of course, works directly with the plant manager.

Q. If a foreman is to be absent from work for any reason, for personal business or because of illness, to whom does he report prior to leaving his work? A. The superintendent.

Q. The superintendent? A. Yes.

Q. Can he leave the plant and the job for any length of time without getting permission from the superintendent? A. He usually does. In fact, he should get permission from the superintendent.

98 Mr. Cook: That isn't quite clear. You say he usually does. He usually does what, leave without permission or he gets permission?

The Witness: He usually gets permission from the superintendent.

Q. (By Trial Examiner Ryan) He should in all cases if it is to be for any length of time that he is to be absent; is that right? A. That is right.

Q. Now, with respect to the relationship between the assistant foreman and the foreman, Mr. Martindale, does the assistant foreman take any orders from the foreman that he works with? A. Yes.

Q. He does? A. Yes.

Q. What is the degree of authority that is exercised over the assistant foreman by the foreman? Can you give us that? A. I don't know that I can define it clear enough. I know the foreman of our shipping and receiving department has an assistant foreman that takes orders from him.

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99 **Cyrus Horner**, a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand * * *

Direct Examination

Q. (By Trial Examiner Ryan) Mr. Horner, can you answer the question as to the degree of supervision which the foreman exercise over the assistant foreman in the plant, or in a department? A. The foreman generally instructs the assistant foreman as to what job he would like to have carried out first, and he supervises the men and handles them to get the job out. Like such as loading cars or receiving materials, he has all the work laid out for them, what there is to do.

Mr. Cook: When you say "he" you mean the assistant foreman?

The Witness: Assistant foreman.

Q. (By Trial Examiner Ryan) Does the foreman
100 have the authority to discipline the assistant foreman under him in any way? A. Yes.

Q. What is the authority of the foreman with respect to disciplining the assistant foreman? Just what can he do in that regard, Mr. Horner? A. Well, he could go to the superintendent and make a recommendation that he be given time off, or reprimanded in some way, which would correct the conditions that existed in the department.

Q. Could he even recommend to the superintendent that the particular assistant foreman be removed from his department? A. Yes.

Q. And another one be substituted in his place; is that correct? A. Yes, sir.

Q. Is there generally a considerable variance in the amount of salary that is received, or wages that are received by the foreman as compared with that received by the assistant foreman? A. In some cases, there is a little difference in the wage rate.

Q. A little difference, you say? A. Yes, sir.

101 Q. About what percentage of difference would you say generally exists? A. Probably 5 percent.

Q. 5 percent. In favor of the foreman, of course? A. Yes, sir.

Q. Now, who is the next highest in authority just above the grade of foreman in the plant? A. The superintendent.

Q. Superintendent? A. Yes.

Q. Does he receive a higher rate of pay than any of the foreman who work under him? A. To my knowledge he does. There may be one or two exceptions, I am not sure about that.

* * * * *

Cross Examination

Q. (By Mr. Tietz) I will ask you to recollection, if you are able to, an employee by the name of Kenneth Fender. I believe he is a Class B machinist in Mr. Logan's department. Do you have any recollection of having an employee of that name? A. Yes, sir.

102 Q. Is it true or not that he was laid off? A. No, he quit.

Q. Do you know under what circumstances he left the employ of the company? A. I think it was over wages. He went to work in the machine shop as the tool and die setter, or job setter, rather.

Q. Not to interrupt, is that a setup man? A. Yes, sir.

Q. Was that a higher rate than he was employed at? A. If I am not mistaken it was the same rate.

Q. I see. To the best of your recollection then he quit of his own accord? A. I think he was laid off, and we called him back and he wrote me a letter stating he would not come back and work for those wages.

Q. Was he laid off at the initiative of his foreman or someone in the office? A. A plant layoff, plant wide seniority.

Q. How many men were laid off at that time, do you recollect? A. I don't believe I can.

Q. Was it an appreciable percentage of the total
103 number of employees, or was it very slight? A. Approximately 10 to 20 employees, probably.

Q. During a period of a week or at one time? A. At one time.

Q. Do you recall whether or not his particular foreman wanted to keep him, giving reasons therefor? A. Yes.

Q. So he was laid off against the desire and expressed wish of his own foreman? A. He belonged to the union. You have plant seniority, therefore, you would take the youngest employees and lay them off. The foreman had no jurisdiction over that.

Q. Did the foreman have any authority in your company policy of expressing the desire to keep a man? A. Yes.

Q. Is it the company policy to follow the desires of a foreman whenever they can? A. Yes.

Q. Your position then is that the company was unable to follow the company policy in this particular instance. A. Yes, sir.

Q. Were any exceptions made to seniority at this particular time, in the way of layoffs? A. Not to my knowledge.

Q. Would you have knowledge of all that trans-
104 pired in the way of layoffs at this time? A. Yes.

Q. So that if there were any exceptions, it would be within the range of your knowledge. A. Yes, sir.

Q. Does what you have already testified to apply to maintenance men? A. Well, when there is a layoff you generally go to the plant committee and work out arrangements there as to whether you can keep some skilled help. If it is all right with the committee, you keep such employees; if not, you have to lay them off.

Q. Was this man Fender approved specifically by the committee at this time? A. Yes, sir.

Q. Do you know if any spot welders were kept on, regardless of seniority?

Mr. Cook: Pardon me, Mr. Trial Examiner. When you say was it approved, what do you mean, approved for what, for layoff or for what?

Mr. Tietz: The tendency of the examination is to show there are exceptions.

Mr. Cook: I am not trying to limit your examination. I am trying to find out when you say approved what it means, so the record will show.

Mr. Tietz: I see. I thought you were questioning
105 the question itself.

Mr. Cook: No, not at all.

Trial Examiner Ryan: And you also said approved by a committee. We still don't know what the committee means so far.

Mr. Cook: That is right.

The Witness: It is approved by our Local Union 809. They have a plant committee there which represents the employees. When there is a layoff they take the youngest employees and lay them off first, the probationary, the youngest employees. If there are any exceptions the plant committee is talked with before any employees are laid off.

Mr. Cook: May I ask this one question: In the particular case the gentleman Mr. Tietz has been inquiring about was laid off and his layoff was not excepted to by the committee; is that right?

The Witness: That is right.

Q. (By Mr. Tietz) It was excepted to by his own foreman? His own foreman did object to this man being laid off? A. I believe he did.

Trial Examiner Ryan: This committee of employees is a union committee, I presume, operating under that U.A.W.-company contract.

Mr. Cook: U.A.W.-C.I.O., yes, sir. The contract
106 does provide for seniority and layoffs?

The Witness: Yes.

Mr. Cook: And the only way you can make any exception to it, in the case of skilled help, is if the company requests an exception in order to retain some skilled man necessary for layoff or something of that sort; they must get permission of the committee to do it or the approval of the committee?

The Witness: Yes.

Mr. Cook: If they don't get approval, he must be laid off?

The Witness: Yes, sir.

Mr. Cook: In accordance with the contract.

The Witness: Yes, sir.

Mr. Tietz: One more question or two, Mr. Examiner.

Trial Examiner Ryan: All right.

Q. (By Mr. Tietz) Do you know whether or not in this particular case we are talking about of Kenneth Fender that approval of the union committee had been secured, if the management itself would approve?

Mr. Cook: Again I would like, Mr. Trial Examiner, to have Mr. Tietz finish his question so I will know what he is talking about. Approved for what?

Mr. Tietz: We are, of course, discussing laying off or retaining. Only that one point is the whole trend of
107 my question.

Mr. Cook: What do you mean, approval of layoff or approval to retain?

Trial Examiner Ryan: Let's have the question read.

(The question was read.)

Trial Examiner Ryan: That is not clear to me, either. I wish you would reframe that question, Mr. Tietz.

Mr. Tietz: All right, sir.

Q. (By Mr. Tietz) You know, of course, that the foreman desired to keep Kenneth Fender? That had been made clear? A. Yes, sir.

Q. Do you know whether or not the approval of the union committee, the committee of the union to which Kenneth Fender belonged had been secured for his retention, making him an exception from the layoff you have testified to, conditioned upon approval of the management to his retention?

Mr. Cook: Well now, Mr. Trial Examiner, I think it has been made clear by the witness, at least as I understand it,

that the contract provides that men shall be laid off in the order of seniority in the plant. That only in the case where the company desires to retain some particularly skilled man it makes a request to the committee and the committee can or cannot, as it desires, approve the exception. If they don't approve the exception, then the company, of course, abides by its contract.

108 The way Mr. Tietz is putting the question it would be on a basis of where if the union committee said they wanted to keep a man, with the approval of management, then he could be kept. Obviously the contract doesn't so provide.

Q. (By Mr. Tietz) Is that correct, Mr. Horner? A. That is correct.

Q. Is it your position then that in this particular case you, representing the management made no request to the union committee to except Kenneth Fender from the lay-off? A. The union would not approve it. They said the youngest employees had to be laid off, and we have no jurisdiction over that.

Q. My question is did you make any request of the union committee that he be excepted?

* * * * *

The Witness: Yes.

Q. (By Mr. Teitz) You did ask them? A. We asked the committee.

Q. And the committee turned down the management on that point? A. Yes, sir.

Trial Examiner Ryan: In other words, the union refused to waive its seniority clause in the contract and insisted it be carried out with respect to Fender, and
109 you had to lay him off in line of seniority; is that correct?

The Witness: Yes, sir.

Trial Examiner Ryan: What motivated your request to the union for permission to keep Fender? What was the reason you happened to ask the union committee to waive

its seniority clause in the contract so you could keep Fender?

The Witness: He was very well experienced on the setting of these dies in our pressing department.

Trial Examiner Ryan: Did the foreman's position on the matter that he would like to see this particular man kept on the job have anything to do with influencing the company to ask the committee to retain him?

The Witness: Yes, sir.

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Q. (By Mr. Tietz) Are you the representative of the management that deals with the union to which Fender belonged? A. I was at that particular time.

Q. These transactions of which you testified to are all matters you took a personal part in? A. Yes.

110 Q. And a direct part in conferring with representatives of the union? A. Yes.

* * * * *

Q. (By Trial Examiner Ryan) Mr. Horner, are there occasions when a foreman will present a grievance to the management in respect to his own particular job? For example, are there instances where a foreman has in the past come to the higher branches of management and asked for a higher salary—for example, Logan would be one—for an increase in pay? To whom would he go in a case like that? A. He generally reports to me on that.

Q. To you? A. Yes.

Mr. Cook: You are the factory manager?

The Witness: Yes, sir.

Q. (By Trial Examiner Ryan) Would that be true of any grievance he would have in connection with his own personal working conditions in the shop? A. Go to the superintendent first on any working conditions in the plant.

Q. Even though it applies just to himself personally and not necessarily to the men under him in the department?

A. No; he would go to the superintendent.

111 Q. If the superintendent couldn't correct the grievance, to whom would the matter be brought? A. The factory manager.

Q. The factory manager? A. Yes.

Q. Let's take the instance where a foreman would decide himself that he would like to have a slight increase in wages, would he first go to the superintendent with that? A. Not in wages.

Q. Not in wages? A. No.

Q. He would go to you; is that right? A. Yes, sir.

Q. As production manager? A. Yes.

Q. Is that your title, production manager, Mr. Horner? A. Factory manager.

Q. What would you do with a problem like that, a wage problem, that is, for the foremen? Would you adjust it yourself or would you take it up with other officials of the company? A. I make a recommendation to the plant manager.

Q. Does he have the final authority to reject it or approve it? The raise I am talking about. A. At that particular time he has.

112 Q. He has? A. Yes.

Cross Examination

Q. (By Mr. Cook) May I ask what you mean by "that particular time"? A. There is a form to be filled out, which is sent on to Detroit, and it is also approved in our Detroit office.

Q. Detroit is the head office of the company? A. Yes, sir.

Q. Their approval must be obtained, also, in the case of foremen, on the question of raises, by the Stabilization Board under those circumstances? A. Yes.

Q. Of the Internal Revenue Department; is that right? A. That is right.

Q. That is handled through the Detroit office? A. Yes.

Q. Recently there was a change made in overtime provisions, testified to by Mr. Ely yesterday. A. Yes.

Q. That was handled by the Detroit office through the Stabilization Board? A. That is right.

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113 **Warren B. Logan**, a witness called by and on behalf of the National Labor Relations Board,

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Direct Examination

By Trial Examiner Ryan:

Q. Mr. Logan, will you state your full name, please? A. Warren B. Logan.

Q. What is your address? A. 8448 San Luis, South Gate.

Q. South Gate, California? A. Yes.

Q. What is your occupation? A. Machine shop foreman.

Q. For what company? A. For the L. A. Young

114 Spring & Wire Company, 3200 East Slauson Avenue, Los Angeles.

Q. That is the plant involved in this particular matter? A. Yes.

Q. Do you have any association or affiliation with the Foremen's Association of America? A. I do.

Q. Local 155? A. I do.

Q. What is your position with that organization? A. At present I am the President.

Q. President of Local 155? A. Yes.

Q. How long have you held that position, approximately? A. Since January.

Q. Of this year? A. Yes.

Q. Had you held any position, other than that, with Local 155 prior to January of this year? A. I don't believe so.

Q. Can you tell us whether or not the Foreman's Association of America is the same organization that was involved in the Packard case, which was recently decided by the Board? A. Yes, it was.

Q. Case No. 7-R-1884. Do you have a recollection
115 as to whether or not it is the same union? A. The same union.

Q. Is this Local 155, of which you are President, confined only to the members which you have in the plant of the L. A. Young Company at 3200 East Slauson? A. Yes.

Q. That local does not have any members, other than those they have in that one plant; is that right? A. That is right.

Q. Does the Foremen's Association of America, to your knowledge, have any bargaining contracts in any plants here in California or in the Los Angeles area with any companies covering foremen and assistant foremen? A. Just at our plant, Plant 9, that I know of.

Q. You do not, of course, have a contract State-wide? A. No.

Q. When did the Foremen's Association of America first begin organizing the foremen and assistant foremen of the plant here involved, approximately? A. About the 1st or 2nd of January.

Q. Of this year? A. Yes.

Q. How long did that organizational effort continue, or is it still continuing? A. The organization is 100 percent now.

Q. Was your organizational effort among the fore-
116 men and assistant foremen at the plant here involved confined only to those foremen and assistant foremen that worked in the production and maintenance division of the plant? A. Yes.

Q. Can you tell us what the reason is for confining the organizational effort just to that particular division, the production and maintenance division? Did you have any reason for that? A. To keep it a complete unit, and for the problems that concerned the foremen in the plant themselves.

Q. As I take it then, it is the position of your union that the foremen and assistant foremen in the production and maintenance division have different problems and difference interests than supervisors of other departments of the company. A. That is right.

Q. Can you tell us why the organizational effort was confined to foremen and assistant foremen and did not include other supervisory grades above the scale of foremen, of the graded foremen? A. We did not want to take in anyone that formed company policy.

Q. Anyone that formed company policy? A. Yes.

Q. It is your position that the next grade of supervisor above the grade of foreman is included in the group of management that form company policy?

A. Yes.

Q. It follows from that, I suppose, your position is the foremen and assistant foremen do not form company policy? A. That is right.

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118 By Trial Examiner Ryan:

Q. What did you have in mind, Mr. Logan, when you referred to the term "company policy"? A. I would say that anyone that makes rules or gives orders over the foremen, or has the final opinion on any orders given.

Q. What particular type of rules did you have in mind? A. Rules governing the employees of the plant and the conduct of the employees, or the manner in which the work is carried out.

Q. Is it your position that the foremen and assistant foremen in the instant plant have no authority to make these rules that you have indicated, or— A. Not without being responsible to the management.

Q. You are a foreman of what division, what department? A. Machine shop.

Q. In your functions as foreman of the machine shop, will you tell us briefly what you do? A. I supervise all the new dies that are made, new tools, maintenance of all broken tools and dies, repairs.

Q. By maintenance of tools and dies, what do you mean, keeping them in repair? A. Keeping them in repair?

Q. Is that done right in your department? A. Yes.

119 Q. Or are there occasions when they have to be sent

out of the department for repairs? A. Not unless they are such a large die we cannot handle it.

Q. Do you ever have to consult with a person in higher authority than yourself before you can proceed to have a die or a piece of equipment in your department repaired?

A. No.

Q. You do not? A. I have that authority, because I have the knowledge to go ahead with it.

Q. When you were put into the department as foreman, were you given any instructions as to how you were to function in that department, what your duties were and what your authority was? A. I had complete control of that department. The only thing is that if the superintendent thinks that something else is in more of a rush than what I am working on, he will come in and tell me he would like to have that out.

Q. When he tells you that, does that mean that he is merely recommending it to you or that that is an order you must follow and get busy on what he thinks is important in that instance? A. As a rule we get busy and follow out his order, because unless a man is tearing
120 down a job it would cause us to lose time.

Q. Now, if you have a man in your department, for example, that takes some time off without a good reason, can you discipline him for that? A. In what way?

Q. Supposing he was absent from work without just cause and was doing it repeatedly, so that it was interfering with the operation of your department, would you have authority to discipline him for that? A. I would have to go to the steward.

Q. To the shop steward? A. Shop steward in my department.

Q. That is, the union shop steward. A. Yes.

Q. What would you do in that particular case? A. Explain to him the story and the details, and take the steward with me and warn the employee that we would have to take other measures, other steps if he continued the offense.

Q. Is there a list of rules or regulations in your depart-

ment which specify that for certain violations on the part of employees they shall be disciplined to this extent or that extent? For example, they will be laid off three days or a week for this offense and they will be laid off for one day for such and such an offense, or anything like that? A. No.

Q. There is no such list of rules? A. The only list that we have is one sent out by the management for gambling.

Q. Gambling? A. Yes.

Q. What was the rule on that? A. That didn't include just my department. That included the whole plant.

Q. When I asked you about these rules and regulations I was not necessarily implying they were only for your department, but they might be rules that apply to all departments. But I want your particular department's experience with those rules. If you had a man in your department that you desired to get rid of for any reason, discharge him or terminate his employment, how would you go about that? A. I would have to get the union steward and give him the story of the reason he should be laid off, or his employment termination. If the union doesn't agree, then it is taken up with the management by the union.

Q. Assuming you and the steward agree on the action that you desire to take, can you go ahead and take it and lay the man off or discharge him? A. In a case of coming on the job while intoxicated, possibly you could. But where the man can be given another chance as a rule the union asks for that chance.

Q. Supposing that the union does not ask for the other chance, could you lay him off for practically any reason, assuming the steward was very easy about that and would say, "It is up to you, you do whatever you want to with that fellow, fire him or lay him off or discipline him for a while," would there be any other hindrance to your taking action on that case? Would the management, the higher management object to your being too strict in disciplining the man? A. I would have to take him to the personnel department

and tell them what the trouble was, and they, in turn, would get his check.

Q. Has there ever been an instance, to your knowledge, where a foreman has taken a man in his department to the personnel office to have him paid off, because he wanted him discharged, and his action in discharging the man was reversed before the employee was let out of the shop? A. In my department?

Q. In any department. A. In any department?

Q. To your knowledge. A. I couldn't answer that for the whole plant.

123 Q. Can you answer it so far as your own department is concerned? You have never had that experience, I take it. A. As a rule we have given them two or three chances first, and then laid them off.

Q. Now, in your organizing efforts at the plant involved in this case, Mr. Logan,—and when I say “your” I mean the organizing efforts of the Foremen's Association—have you been holding meetings on occasion, union meetings, that is, from time to time? A. We have been meeting in a hall in Maywood.

Q. Can you tell us whether or not you use the same hall as the U. A. W. which has a contract with the company for the production and maintenance employees? A. I don't believe they have anything to do in that hall, at all, that I know of.

Q. Have you ever at any time held joint meetings with the U. A. W., that is, the representative of the production employees in the plant? A. No.

Q. To your knowledge, has Local 155 any mutual agreement with the U. A. W.-C. I. O. in the plant for mutual assistance of any kind? A. No, no agreement has been reached on anything like that.

Mr. Cook: I can't hear the answer.

The Witness: No, no agreement has been reached
124 on anything like that.

By Trial Examiner Ryan:

Q. Have you any understandings with the U. A. W.-C. I. O. there at the plant that if either your organization or the C. I. O. organization becomes involved in a work stoppage or labor dispute with the company one union will support the other union? A. No.

Q. You have no such agreement? A. No.

Q. To your knowledge there are no understandings or agreements between the C. I. O. bargaining agent there in the plant and Local 155; is that right? A. That is right.

Q. In your department do you have an assistant foreman? A. No.

Q. During the organizing efforts of the Foremen's Association among the foremen and assistant foremen at the instant plant, did you receive any help in those organizing efforts from the U. A. W.-C. I. O., the bargaining agent there? A. No.

Q. Or any representatives of the U. A. W.-C. I. O., any representatives of that organization? A. No.

Q. Are the foremen rated every so often as to their 125 abilities? A. No.

Q. They are not? A. No.

Q. Do the foremen rate the employees under them? A. We have a sheet that we fill out; it is a regular form.

Q. Who supplies you with that form? A. Mr. Horner.

Q. Mr. Horner? A. Yes.

Q. This form, I suppose, has the various matters listed on it you are to consider in rating the particular man; is that right? A. Yes.

Q. After you have proceeded to rate the man on this particular form you receive from Mr. Horner, what do you do with the rating? A. At the time we take it to the personnel department. It formerly was turned in to Mr. Horner.

Q. In addition to rating forms that you receive, do you receive any other forms in connection with the operation of your department? A. Yes.

Q. What other forms? A. We receive overtime slips.

Q. Whom do you receive those from? A. The
126 superintendent.

Q. What is the nature of the information on those slips? A. That is to get authorization for working your department overtime and for working on Sundays, too.

Q. You say you take that slip and get it signed by somebody, do you, to authorize you to work the department overtime? A. Yes.

Q. To whom do you go for such authorization? A. To the superintendent.

Q. The superintendent? A. Yes.

Mr. Cook: Pardon me, Mr. Trial Examiner. I wonder if you would straighten out something there as to whether he is talking about overtime slips for the foremen or overtime slips for the men under the foremen.

By Trial Examiner Ryan:

Q. Which did you have in mind, overtime for the foremen or overtime for the men? A. We have both kinds. If a foreman works overtime he has to have authorization, too.

Mr. Cook: May I ask one question there?

Trial Examiner Ryan: Yes.

Mr. Cook: The overtime slips for your men under you are signed by the foremen; is that right?

The Witness: Yes.

Mr. Cook: That is right?

127 The Witness: Repeat that question again.

Trial Examiner Ryan: Read the question.

(The question was read.)

The Witness: No, they are signed by the superintendent.

Mr. Cook: You are sure about that?

The Witness: Yes.

Mr. Cook: May I ask just one other question?

Trial Examiner Ryan: Yes, surely.

Mr. Cook: It is true, is it not, Mr. Logan, that the superintendent signs the overtime slips of the foremen, but that the foremen sign the overtime slips of the men under them?

Now, if you don't know you don't have to answer. If you don't know, so indicate. How long have you been a foreman out there?

The Witness: Two years.

Mr. Cook: You know, don't you, how it is done? You do know that the foremen sign the overtime slips of the men under them; don't you?

The Witness: No, they are signed by the superintendent.

Mr. Cook: And not signed by the foreman; is that correct?

The Witness: That is right.

Mr. Cook: You are sure about that?

The Witness: That is right.

Mr. Cook: All right.

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128 Mr. Cook: Will you make that statement on the record?

By Trial Examiner Ryan:

Q. Make that statement on the record. A. I am not quite sure about a foreman signing for his own men.

Q. While you are on the stand I want to ask you another question, Mr. Logan. You, as President of the petitioner, can state whether or not the petitioner desires an election to be held in this case; is that right? Do you desire the Board to direct an election? A. Yes.

Q. Among the foremen and assistant foremen? A. Yes.

Q. Does your union have any contention as to what the eligibility date should be, to determine who should be eligible for voting? Do you understand what I mean by that? That is, which payroll date should be used to determine who is eligible for voting, in the event an election is held? A. Well, I don't exactly know what you mean there.

Q. Well, there has to be an eligibility date to determine who is eligible for voting in these elections.

129 The Board usually fixes the last payroll date which takes place before the actual day of the election, unless

there is some reason why they shouldn't take that date. For example, if an election were held tomorrow and your last pay day was three or four days ago or a week ago, that would be the pay day, the payroll that would be used. Anybody who would have been hired since then as a foreman would not be eligible to vote. Do you understand that?

A. Oh, I do now. Well, we have no —

Q. You have no preference? A. No preference.

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Cross Examination

By Mr. Cook:

Q. Mr. Logan, you have been with the plant of the L. A. Young Spring & Wire Company involved here for about two years as a foreman? A. Two years as a foreman, yes.

Q. Prior to that time were you with the plant here in Los Angeles? A. Yes.

Q. What did you do then? A. I was assistant foreman.

130 Q. How long were you assistant foreman? A. Approximately two years.

Q. Prior to that did you work in the plant? A. Yes.

Q. Here in Los Angeles? A. Yes.

Q. What was your job then? A. Tool maker.

Q. Tool maker? A. Yes.

Q. How long were you a tool maker before you became assistant foreman? A. In this plant?

Q. Yes. A. It would be about three years. I have been here since 1937.

Q. 1937? A. Yes.

Q. About eight years? A. Yes.

Q. Now, prior to that time did you work for the L. A. Young Spring & Wire Corporation? A. No.

Q. You came from some other plant. What plant
131 did you come from? A. I came from the Matthews Company in Pittsburgh.

Q. In Pittsburgh? A. Yes.

Q. What was the business of that company? A. The business of that company was making steel stamps and bronze tablets.

Q. What was your job there? A. Draftsman.

Q. Draftsman? A. Yes.

Q. How long were you with that company? A. Approximately a year.

Q. A year? A. Yes.

Q. Prior to the time you were with that company, who were you with?

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132 A. Ellison Bronze Company in Jamestown.

Q. Where? A. Ellison Bronze Company in Jamestown, New York.

Q. In what capacity? A. Partly as draftsman and partly as layout man on their tablets.

Q. Were there unions in any of these plants you have been employed in? A. No.

Q. None at all? A. No.

Q. There is a union, the U. A. W.-C. I. O. in the L. A. Young plant in Los Angeles; isn't there? A.

133 Yes.

Q. You have had considerable dealings with that union, have you not, in your capacity as a foreman? A. Yes.

Q. And in your prior capacity as assistant foreman? A. Yes.

Q. You have handled grievances with them on behalf of management, haven't you? A. Yes.

Q. And on many occasions; isn't that correct? A. Oh, yes.

Q. Do you receive literature and periodicals and other information from the headquarters of the F. A. A. in Detroit? A. Yes.

Q. A man by the name of Keys is the President of it; is he not? A. Yes.

Q. You do know that the C. I. O., U. A. W.-C. I. O., has in written circulars and in addresses made through Mr.

Thomas, the President of the U. A. W.-C. I. O., and otherwise, welcomed and agreed to cooperate with the F. A. A.; do you not? A. I have not read any such articles.

Q. You don't know whether it is true or not?

A. No.

134 Q. Does the union, U. A. W.-C. I. O., the Local in the L. A. Young Spring & Wire Company here in Los Angeles, have a labor paper or publication? A. Yes, they have.

Q. What is the name of it? A. I couldn't give you the name of it.

Q. It is called the "Clipper"? A. I believe that is it.

Q. "Union Clipper"? A. Yes.

Q. Do you ever see those papers? A. Yes.

Q. Recently there was an article in there, in this union paper, U. A. W.-C. I. O. paper, welcoming the F. A. A. local, your local in the plant of the Young Spring & Wire Works; was there not? A. Yes.

Q. That is right? A. Yes.

Q. You have talked to some of the leaders of the U. A. W.-C. I. O. in that local, have you not, about your organization? A. Not personally. I mean by that not too deeply.

Q. But you have talked with them about it; haven't you? A. Just offhand.

Q. Well, you told them about your plans of or-
135 ganization before you filed this application? A. Yes.

Q. They were in complete sympathy with it; were they not? You know they recently published an article in their paper welcoming you; did you not? A. Yes.

Q. And they told you they were in sympathy with your plans? A. Yes.

Q. You are familiar with the responsibilities and the ideals of union; are you not? A. Yes.

Q. You know that it is a very definite and rigid rule that the men of one union will not cross the picket line of another union; is that right? A. I wouldn't swear to that.

Q. You don't know. Let me ask you a question: Assuming that an election was ordered here; assuming upon

the election your local was made the bargaining agent for the foremen and assistant foremen of the production and maintenance workers in this plant, and you were the bargaining agent and the contract was made between you and the company, in accordance with the certification; and assume sometime later the U. A. W.-C. I. O. employees in the plant struck and put a picket line around the
 136 plant; would you cross the picket line? A. I couldn't say what I would do in the future.

Q. Do you think you would or not? A. I don't know.

Q. As a matter of fact, you would have a certain loyalty of necessity as a union man to the U. A. W.-C. I. O. in their dispute with the company. A. I couldn't say that.

Q. Wouldn't you be bound to have that as a union man?

Mr. Tietz: Mr. Examiner, I would like to ask Mr. Cook to elaborate on his question. Bound by what? Bound by some rule or some code of ethics, or what?

Mr. Cook: He can answer it. It is in his own mind, as to whether he would or not.

Trial Examiner Ryan: Do you understand the question, Mr. Logan?

The Witness: I would like to have it repeated.

Trial Examiner Ryan: Read the question.

(The question was read.)

By Mr. Cook:

Q. You would naturally have sympathy with the U. A. W.-C. I. O. employees if they struck in the plant, wouldn't you, as a union man? A. The U. A. W.-C. I. O. has nothing to do with our organization.

Q. That isn't the question. I am asking you if
 137 the U. A. W.-C. I. O. employees of the Young Spring & Wire plant, in which you are a foreman, struck due to a labor dispute with the company, the L. A. Spring & Wire Corporation, you naturally, as a union man, would have to have sympathy with that strike; wouldn't you? That can be answered either yes or no.

Mr. Tietz: Mr. Examiner, I think if the word "naturally" were left out he could.

Mr. Cook: All right. Let's take the word "naturally" out.

Trial Examiner Ryan: Can you answer the question, Mr. Logan?

The Witness: I can't predict what I may do in the future.

By Mr. Cook:

Q. All right. If the U. A. W.-C. I. O. employees in the plant struck, would you go to work in the plant while the strike was on, as a foreman? A. I still say unless the condition arises I could not say what I would do.

Q. You do, by the very fact you are hesitating in your answers and all, mean it would be a problem with you, wouldn't it, as to whether you would or whether you wouldn't go on working; is that right? A. No.

Q. You don't know whether it would be a problem or not? A. No.

138 Q. Why do you hesitate so long to answer? A.

Because I don't want to give any testimony that may be held against me or the union.

Q. In other words, the best you could say is in the event of a strike and a picket line was around the plant you don't know whether or not you would cross the picket line; is that right?

The Witness: Do I have to answer that?

Trial Examiner Ryan: Well, if you can.

Mr. Cook: It is important, your Honor.

Trial Examiner Ryan: If you can?

The Witness: I still say I can't predict anything in the future.

By Mr. Cook:

Q. All right. Then you don't know whether or not you would? A. I don't know.

Q. That is right. If the F. A. A. becomes the bargaining agent of the foremen and assistant foremen in the plant,

and they pull a strike in the plant, would you expect the U. A. W.-C. I. O. employees to come in to work? A. We would have no jurisdiction over the U. A. W.-C. I. O.

Q. You do know that the F. A. A. has pulled a number of strikes throughout the country, do you not, in different plants in which they are organized; is that right?

139 A. Which union?

Q. F. A. A. A. F. A. A?

Q. That is right. A. Yes.

Q. You know they struck in the Murray Body Corporation, for instance, in Detroit? A. Yes.

Q. You know there that the U. A. W.-C. I. O. did not cross the picket line of the F. A. A.? A. I didn't know anything about that.

Q. You never heard anything about that? A. I didn't know anything about that.

Q. Do you know anything about where the U. A. W. have struck in a plant and the F. A. A. has been in and the F. A. A. has refused to cross the picket line of the C. I. O.? A. I don't know of any instance.

Q. You say you have read a number of circulars by Mr. Keys, is that right, on the principles and regulations and rules of the F. A. A. A. I have read a few of them, but not thoroughly.

Q. Has anyone from the Detroit office of the F. A. A. been out here to guide and assist you in your unionization of the foremen and assistant foremen in this plant? A.

Since we were organized; yes.

140 Q. Who, Mr. Traen? A. Mr. Kelly.

Q. Did you say Mr. Kelly? A. Mr. Kelly.

Q. What is his position with the F. A. A.? A. He is the membership director.

Q. The membership director? A. Yes.

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By Mr. Cook:

Q. Mr. Logan, you know what the word scab, s-c-a-b, means, as applied to a union? What does it mean? A. A

person that goes in and works in someone else's place when they are out on strike.

Q. If there was a strike by the U. A. W.-C. I. O. in the plant of the L. A. Young Spring & Wire Corporation here in Los Angeles, would you attempt to fill the strikers' jobs with other men, as a foreman? A. No.

141 Q. You wouldn't? A. No.

Q. Will you answer? You wouldn't attempt to fill the jobs of the strikers with other men; would you? A. No.

Q. As a union man by filling such a job you would be called a scab by the U. A. W.-C. I. O. A. If I filled the job.

Q. That is right. Now, in addition to the support of your local, you do know that in plants like the Murray Body Corporation, the C. I. O. has actually circularized the plant in the support of the A. F. F.; don't you? A. Circularized our plant?

Q. No, circularized plants like the Murray Corporation when the F. A. A. was on strike. A. I don't know.

Q. You don't know? A. No.

Q. You are the head of the local of the F. A. A. union involved? A. I am President.

Q. Are there any other F. A. A. organizations in this area? A. Yes.

Q. Are you the head of those, also? A. No.

142 Q. Are you the head only of this local? A. Yes.

Q. This local involves, I believe, the Trial Examiner brought out, the foremen and assistant foremen in this particular plant; is that right? A. That is right.

Q. It is not affiliated with any like group in any other plant in the area? A. No.

Q. Would you know whether or not this statement was made in a circular circulated to the Murray Body employees by the C. I. O. at the time of the strike of the F. A. A.: "Labor unions up until the formation of the Foremen's Association of America have always had the threat of foremen who would employ scabs demanded when to do so by management in order to weaken the position of a labor

union. Since the founding of the Foremen's Association of America labor no longer need worry of foremen who are members of the Foremen's Association of America placing scabs in the jobs of workers who are idle because of a labor dispute." A. I have never heard that before.

Q. But that principle is the principle that you would adopt; isn't it? I think you have already answered that.

143 Mr. Tietz: Do you understand the question?

The Witness: Without studying that in detail I wouldn't answer that question, as written there, unless I studied it.

By Mr. Cook:

Q. You would answer that you would do that; is that right? A. I wouldn't answer it unless I had studied it.

Q. Now, the F. A. A. has a constitution; has it not? A. Yes.

Q. You have seen copies of it? A. Yes.

Q. That is written in Detroit; is it not? A. Yes.

Q. That is the headquarters of the F. A. A.? A. Yes.

Q. You, as a member of the F. A. A. would expect to, in all respects, comply with the constitution of the F. A. A.; wouldn't you? A. Yes.

Q. And with the rules and regulations of the F. A. A. as laid down in the headquarters in Detroit; is that correct?

A. That is correct.

Q. If the F. A. A. advised you in the case of a strike of local employees of the U. A. W.-C. I. O. in the plant of the L. A. Young Spring & Wire Corporation that you or mem-

144 bers of the F. A. A. were not to cross the picket line, you wouldn't do it; would you? A. No policy has been laid down yet.

Q. I say if they did. If they so instructed you not to cross the picket line of the U. A. W.-C. I. O., you wouldn't do it; would you. You have agreed to be bound by the rules and regulations laid down, is that right, by the head office of the F. A. A.? A. I can't say what I would do in future

times, but if I could see that bodily harm was coming to me I wouldn't cross a picket line.

Q. If the F. A. A. laid down a rule and instructed you as a member of the F. A. A. not to cross the picket line of the U. A. W.-C. I. O., you wouldn't do it; would you?

Mr. Tietz: I think we should have determined, as a matter of fact, first, whether or not such a policy has been laid down. Otherwise, the question would have no bearing whatever.

Mr. Cook: I will get to that in a minute, Mr. Trial Examiner.

Mr. Tietz: I think that foundation should be laid, Mr. Examiner.

Mr. Cook: I submit, Mr. Trial Examiner, I am entitled to an answer to the question, if the witness can answer it.

Mr. Tietz: I think it would be so purely hypothetical that it would have no bearing whatever upon
145 the issue here.

Trial Examiner Ryan: I think he has, in effect, already answered the question, anyway.

Didn't you say you would live up to the rules and regulations of the F. A. A.?

The Witness: Yes.

Trial Examiner Ryan: Whatever rules they promulgated you intend, as a member, to live up to them?

The Witness: That is right.

By Mr. Cook:

Q. As the head of the F. A. A. in this particular local, in the L. A. Young Spring & Wire plant, you would instruct other members to do likewise; wouldn't you? A. We have a Board who has that authority.

Q. And the Board is where? A. All I do is preside over meetings.

Q. You don't know enough about the F. A. A. to know whether or not they intend at some future time to affiliate with the C. I. O. or A. F. L. or some other organization; do

you? A. I wouldn't know anything about that, but as far as I know there is no intention——

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147 Cross Examination

By Mr. Tietz:

Q. About this picket line policy, do you know if any policy has been laid down by the National F. A. A.?

148 A. None that I know of.

Q. Do you believe then that at the present status it is purely a matter of local autonomy? A. Whether or not——

Mr. Cook: Just a minute. Mr. Trial Examiner, I certainly submit that the question of what the witness believes is not important or relevant. He has made a statement he doesn't know whether or not such a regulation or rule has been laid down.

Mr. Tietz: Mr. Examiner, may I discuss it for a few moments?

Trial Examiner Ryan: You are directing his attention now to the local autonomy; are you not?

Mr. Tietz: Yes.

Trial Examiner Ryan: Do you know what the local autonomy is, in that question?

The Witness: No. If you explain what autonomy means——

Mr. Tietz: I will reframe my whole question, with the permission of the Examiner.

By Mr. Tietz:

Q. Since there is no national policy of the F. A. A., to your knowledge, on the question of crossing picket lines, is it your present understanding that each local can make the decision for itself as an occasion may arise for a decision?

Mr. Cook: Mr. Trial Examiner, I submit that the
149 question is wholly improper.

The Witness: Yes.

Mr. Cook: The witness has stated he doesn't know whether there is or whether there isn't such a rule.

Mr. Tietz: May I discuss that before a ruling is made by the Trial Examiner?

Trial Examiner Ryan: Yes.

Mr. Tietz: The witness stated that there is no national policy on this point.

Mr. Cook: I beg your pardon, he did not, Mr. Trial Examiner.

Mr. Tietz: To his knowledge.

Trial Examiner Ryan: To his knowledge.

Mr. Cook: He said to his knowledge he didn't know whether there was or was not. You stated the witness has stated he said there was no national policy.

Mr. Tietz: If it is a quibble on that point, I can ask permission, first, to ask two or three preliminary questions before this.

By Mr. Tietz:

Q. Do you know if there is a national policy on the point of foremen crossing picket lines in their own plants?

Mr. Cook: Pardon me. You say a national policy. Do you mean laid down by the government of the United States or the F. A. A., or somebody?

150 Mr. Tietz: I will make my question as specific as I can, and I hope to make it specific enough for you, Mr. Cook.

Mr. Cook: Thank you.

By Mr. Tietz:

Q. Do you know, Mr. Logan, whether or not the national governing body of the F. A. A. has determined, published, set forth a policy to be followed by its members, by its local chapters, on the question of local members crossing a picket line in a plant in which they are employed? A. I have never seen any policy to that effect.

Q. Therefore, are you able to inform us as to your understanding as to whether or not your Chapter No. 155

would be able to determine its own course of action on any occasion, should the question arise as to whether or not picket lines should be crossed?

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151 Trial Examiner Ryan: Mr. Tietz, I have a question or two I would like to put to the witness. I wonder if you would withdraw your question, pending my questions.

Mr. Tietz: Certainly, sir.

Redirect Examination

By Trial Examiner Ryan:

Q. Mr. Logan, as president of Chapter 155, do you know whether or not the chapter has local autonomy on any matters? That is, by local autonomy, we mean the right in itself to make decisions, without being dictated to or advised by the national organization with which you are affiliated?

A. Referring to strikes, no.

Q. You do not have any autonomy in that regard?

152 A. No. We can apply for the right.

Q. Apply for what right? A. According to the constitution.

Q. Do you have the constitution with you? A. Yes, I do.

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153 By Trial Examiner Ryan:

Q. Mr. Logan, this document I have had marked as Petitioner's Exhibit No. 1, for identification, purports to be the constitution of the Foremen's Association of America, and laws governing chapters. Can you tell me whether or not, it is, in fact, what it purports to be? A. Yes, that is what we go by; it was sent to us.

Q. Is this the constitution presently in effect? A. Yes.

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Trial Examiner Ryan: Petitioner's Exhibit 1 will be received in evidence.

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154 By Trial Examiner Ryan:

Q. Mr. Logan, to your knowledge does the company operate any plant in Los Angeles, other than the one at 3200 East Slauson Avenue? A. Not to my knowledge in Los Angeles. They have one in this area, in Corona.

Q. That is a considerable distance from Los Angeles? A. Yes.

Q. It is at least a hundred miles? A. No. I couldn't answer exactly how far that is. Mr. Justice can clarify that.

Mr. Justice: About 45 miles.

Trial Examiner Ryan: About 45 miles?

Mr. Justice: From plant to plant; 50 miles from Los Angeles.

Trial Examiner Ryan: I should also like to ask Mr. Justice, who just answered the last question, whether or not the agreement between the C. I. O., U. A. W.-C. I. O., and the company for the plant at 3200 East Slauson covers any other plants other than just that one plant?

Mr. Justice: No, it does not; just the one plant only.

Trial Examiner Ryan: Just that one plant?

Mr. Justice: That is right.

155 Trial Examiner Ryan: Do you have any questions, gentlemen, of Mr. Logan?

Mr. Tietz: Yes, I would like to ask a few more.

Recross Examination

By Mr. Tietz:

Q. Do you know if there is anything in the Petitioner's Exhibit No. 1 that forbids a local chapter from making its own decision on whether or not a picket line is to be crossed in any particular place?

Mr. Cook: Mr. Trial Examiner, I submit that Mr. Tietz, as a lawyer, knows the exhibit itself is the best evidence.

Trial Examiner Ryan: I think that is true. I will sustain the objection.

By Mr. Tietz:

Q. Your answers to Mr. Cook's questions concerning crossing a picket line were based on the absence of any provision in the national constitution on the subject of crossing picket lines? A. Yes.

Q. Now, I will direct your memory back to the questions that were asked you by Mr. Cook on discharging employees in your plant. Disregarding 30-day men, men who are employed on probation, because of the union agreement, has there been a man discharged in your department in the last year? A. I let a man go, but I couldn't say whether it was within this year or not. It was so close to a year ago that I wouldn't say it was within this last year.

156 Q. There has only been at the most one case then of that nature?

Mr. Cook: You mean in his department?

The Witness: That is the only one I know of.

Mr. Tietz: In his department.

The Witness: That is the only one I know of.

By Mr. Tietz:

Q. Now, I will direct your attention to the matter of discipline. Whenever any disciplinary action is taken, isn't it true that the management must receive a written notice of it? A. Yes.

Q. Now, I will direct your attention to the matter of repairing dies. When your dies require any work, such as welding, is that done in your own department? A. No.

Q. What is the procedure when work of that nature or similar nature, that cannot be handled in your own department, must be done? A. If it is a small job, we take it to the millwright department, who does the repair and maintenance of welding jobs. If it is a large job, too large for them to handle, then we have to send it outside.

Q. What is the procedure on sending it outside? A. We have to get an order through, a shipping order, and send it out.

157 Q. Does the superintendent or any other individual above the grade of foreman enter into the picture?

A. If it is a large job we consult them.

Q. Are any other departments, other than the machine shop department, to your knowledge, under such control of the foreman as your department is? A. Just how do you mean that?

Q. In other departments when repairs are necessary to any of the equipment, can the foreman of that department order the repairs? A. As a rule —

Q. Let me interrupt. Without the intervention of someone higher in authority than himself? A. I would rather let one of the other foremen answer that question.

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159 Redirect Examination

By Trial Examiner Ryan:

Q. Mr. Logan, with respect to the wages of the people working under you in your department, do you have anything to say about how much they are to receive? A. I can recommend, but sometimes I recommend that I don't want to give them a raise. And sometimes I give a raise, anyway.

Q. Sometimes when you recommend that a raise be given, is it true that it is not given? A. I haven't any cases that way, except that we are governed by so many rules from the War Labor Board now.

Q. Does the company issue you written rules for you to operate under, any written rules whatever? A. Only pieces that come out once in a while. It might be some new rule would come into effect, and type it up and send it up.

Q. When you began to work for the company as a foreman, were you given any instructions or written rules as to how to proceed? A. No.

Q. Or any written rules as to how to handle your men or how to promote them, or demote them, or discipline them? A. Only in regard to the union that is there. We have to go according to their rules.

Q. Do you have reference to the provision of the contract when you say that? A. Yes.

Q. Did you as a foreman have anything to do with negotiating the contract which exists between the company and the C. I. O. Union in the plant? A. No.

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Recross Examination

By Mr. Cook:

Q. As a foreman, the problems and demands of the union prior to negotiation of the contract, and during the negotiation, were discussed with you, weren't they? A. I wouldn't say whether they were discussed; they were read over to us.

Q. Just read and there was no discussion whatever? A. I don't remember of any discussion.

Q. Did you make any recommendations? A. No.

161 Q. Not at all? You didn't have any ideas on it? A. No.

Q. What was the purpose of reading it to you then? A. Just to let us know what it was all about.

Q. And after they were read, the foremen just sat around and said absolutely nothing. A. There was no discussion that I remember of.

Q. Would you say there wasn't a discussion? It was testified this morning there was, this morning or yesterday. Would you say there was a discussion with the foremen concerning the demands of the union? A. None that I know of.

Q. But you won't say there was or wasn't such a discussion? A. I would say no.

Q. But you don't know? A. I would say no.

Q. You don't know whether any of the rest of the men discussed the demands with the higher management; do you? A. I would let the other foremen answer that for themselves.

Q. You can't answer that? A. No.

Recross Examination

By Mr. Tietz:

Q. What meeting is this you are referring to, in response to Mr. Cook's question? A. I think the time that we
162 read that was at a dinner out at the Country Club.

Q. Who was present generally at that dinner?
A. The manager, production manager, and all the foremen. I couldn't say entirely all who was there. Quite a few in the office were there, quite a number of the accounting.

Q. Who read this matter? A. I believe it was a Mr. Figuera.

Q. What position does he hold in the company? A. He is timestudy man.

Mr. Cook: Mr. Trial Examiner, if I may be permitted to ask one question I think I can clear this up.

The meeting you are referring to was the meeting that was called and the dinner that was held when the contract was read, after the contract was signed between the company and the union; wasn't it?

The Witness: Yes.

Mr. Cook: That is right. That isn't the subject we are on.

Mr. Tietz: One more question, though, on that.

By Mr. Tietz:

Q. Were any representatives of the employees, that is, members of this C. I. O. Union present at this dinner?

A. Yes.

Q. In other words, it wasn't exclusively an office plus foremen party? A. It was what?

163 Q. Office plus the foremen. It was office, plus the foremen, plus the men? A. Yes, the C. I. O. men.

Q. Can you tell us how many similar meetings or social gatherings there have been in the last year or two at the Young plant?

Mr. Cook: Do you mean social gatherings at which the foremen were present? I don't imagine the witness might

know the number of times that maybe someone else has gotten together.

The Witness: You mean outside of the plant.

By Mr. Tietz:

Q. Either outside the plant or inside the plant. I will separate it later.

Trial Examiner Ryan: Do you have reference to social gatherings at which Mr. Logan, as a foreman, was present?

Mr. Tietz: Well, I will reframe my question.

By Mr. Tietz:

Q. First, as to social gatherings, have there been any other gatherings which might be termed social, at which you were present, of any employees, any considerable number of employees of the Young plant in the last year or two?

Mr. Cook: Mr. Trial Examiner, that question is so general. I mean obviously the witness wouldn't know every get-together of some of the employees at the plant. He hasn't even confined it to foremen or management.

164 Mr. Tietz: Mr. Examiner, the question includes the statement he was present.

Trial Examiner Ryan: Yes. I will permit him to answer.

The Witness: The employees, do you mean by that the C. I. O. men, or do you mean the foremen?

By Mr. Tietz:

Q. Anyone? A. Well, we have had gatherings at the Country Club.

Q. About how many in the last year or two? A. Oh, I couldn't specifically say how many, but it is not many; about two, I would say.

Q. About two, and were among those present representatives from the office? A. Yes.

Q. The foremen? A. Yes.

Q. And the employees who are now members of the C. I. O. Union? A. Only the time they read the contract.

Q. That is one of these two meetings you refer to? A. Yes.

Q. Now, have there been any business meetings in the plant where announcements were made or things discussed, during this period, that you were present? A. Our business meetings started after we sent the first letter to the plant, and it was sent on to Detroit to Mr. Young.

165 Mr. Young came out and suggested that we would have regular meetings.

Q. Who is "we"? A. The foremen and the company.

Q. The foremen would meet? A. With the management.

Q. With the management? A. With the management.

Q. Before that time had there been any such meetings?

A. Only safety meetings.

Q. Only what? A. Safety meetings.

Q. Is that the only subject that came up during these other meetings, before you notified the company of your intention to organize the foremen? A. Yes.

Mr. Tietz: That is all.

By Trial Examiner Ryan:

Q. Mr. Logan, how often do you have foremen meetings?

A. Now we have them every week.

Q. Where do you meet? A. In Mr. Horner's office.

Q. Who is present besides the foremen? A. Mr. Justice and Mr. Horner.

Q. What is the nature of the business that is conducted each week? A. Mostly about production in the different departments, their production, how they are coming.

Q. Are the foremen given any instructions during those meetings? A. No.

Q. It is a matter of foremen reporting on the production of their various departments; is it? A. Yes.

Q. Do you report in writing or orally? A. Orally.

Q. Can you give us an example of the type of report that you have made in one of those meetings, just what you said? A. They will ask me how the dies are coming on a certain job, and I will tell them they are practically completed or nearing completion.

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Recross Examination:

By Mr. Cook:

Q. In these meetings problems of different departments are discussed among all the foremen; aren't they? A. Problems of their departments, yes.

Q. That is right. They discuss problems, for instance, of departments other than yours at these foremen meetings, at which you are present; don't they? A. Other department besides mine.

167 Q. And foremen generally make recommendations and suggestions as to how improvements can be made, not only in their own departments, but in other departments; is that right? A. They can make the suggestions.

Q. And they do; don't they? A. Not as a rule.

Q. Plans are discussed as to how production can generally be improved and methods and processes in the different departments? Is that true?

The Witness: Will you read that question?

(The question was read.)

The Witness: The methods and processes are not discussed there as much as they are out in the plant.

By Mr. Cook:

Q. As much as they are where? A. In the plant.

Q. In other words, you are constantly discussing those between the foremen and the superintendent and factory manager; aren't you? A. Naturally, we take up any problems we have. Mr. Horner comes out several times——

Q. Or that you bring up; you as foremen bring up? A. My problems I deal with myself, as a rule.

Q. You deal with them yourself? A. Yes.

Q. In other words, you make the decisions on
168 them? A. In my department.

Q. That is right. Now, for instance, not long ago a question was raised as to whether or not, because of the large amount of work in your department, that it would be

a good idea to let some of the work out to outsiders; is that right? A. Yes.

Q. You made the decision as to the work that should go out; is that right? A. No.

Q. You didn't? A. No.

Q. Who did? A. The tool engineer.

Q. You had nothing to do with that? A. I am referring to new work that comes in the plant.

Q. I am not talking about that. I am saying this: That some time ago your particular department was jammed pretty much with work and it was decided that possibly some of it ought to go out and be done on the outside, in order to relieve your department; is that right? A. I don't know what time you are referring to.

Q. You don't know. Has that ever occurred? A. A new job coming in, it sometimes goes out.

Q. You determine in a case like that the work that
169 will go on the outside and the work that will stay in
your department? A. No.

Q. You don't? A. No, the tool engineer decides that.

Q. You don't have anything to do with that? A. No.

Trial Examiner Ryan: Is the tool engineer under you in the department?

The Witness: No, the tool engineer comes under the engineering department.

Trial Examiner Ryan: Can he come into your department and determine such matters?

The Witness: The tools come through his department, that is, the drawings. And if there are any tools to be let out to other plants, they are let out before they come to me. I don't know anything about that.

By Mr. Cook:

Q. Let's assume, however, they had been already turned over to your department, that you had so much work you couldn't do it all and there was a time schedule you had to meet; then what happened? A. Well, I probably would see the superintendent and tell him I couldn't take care of it all.

Q. You would tell him what work you couldn't take care of; isn't that right? A. I wouldn't tell him what work I couldn't take care of. I would tell him I had too much.

170 Q. Would you tell him the work you thought should be sent on the outside? A. No.

Q. You wouldn't? A. No.

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Recross Examination

By Mr. Tietz:

Q. Do you have anything to do with where the outside die work or tool work is sent? A. New tools are sent to DeLux Die Works for one of them. And there is another one, I don't know the name of it.

Q. You don't select the place then? A. No.

Q. When you wish to buy anything, do you make the decision and make the order yourself? A. Possibly a tool for my department I do make out the order and select the tool, and make out the order and it is bought on my recommendation.

Q. Does it require an O. K. from some superior? A. Oh, yes, it has to be O. K.'d.

Trial Examiner Ryan: Who O. K.'s it?

The Witness: It is taken into Mr. Horner. From there on I don't know.

Trial Examiner Ryan: Where did you select it
171 from, a catalogue?

The Witness: A catalogue.

Trial Examiner Ryan: I am speaking of the tools you said you selected on occasions.

The Witness: Yes.

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By Mr. Tietz:

Q. When a foreman wants to change a method, something he considers an improvement, doesn't he have a regular

form to fill out and send to the engineering department?

A. When he wants to change a what?

Q. A method of manufacturing. A. Yes, he does.

Q. There were no such meetings as you described of the foremen prior to January, 1945? A. Not where the whole foremen were called in. The regular meetings were only the safety meetings.

Q. When the superintendent wanted to find out how each department was getting along, he would go around individually more or less to the foremen? A. Yes, that is the way it would be.

Q. But since January you have group meetings? A. Since January, yes.

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172 **Edward B. Broeske**, a witness called by and on behalf of the Petitioner.

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Direct Examination

Trial Examiner Ryan: State you full name and address, Mr. Broeske.

The Witness: The name is Edward B. Broeske. The address is 1523 Elton Avenue, Los Angeles.

Trial Examiner Ryan: What is your occupation, Mr. Broeske?

The Witness: I am foreman in charge of the fabrication parts, aircraft parts.

Trial Examiner Ryan: Is that for the L. A. Young Spring & Wire Company?

The Witness: The L. A. Young Spring & Wire Company.

Trial Examiner Ryan: The location of the plant is 3200 East Slauson Avenue, in Los Angeles?

The Witness: That is correct.

Trial Examiner Ryan: How long have you held
173 that position, approximately?

The Witness: I have been a foreman with L. A. Young close to eight and a half years, now.

Trial Examiner Ryan: Is that steadily in that same plant?

The Witness: Steadily in the same plant.

Trial Examiner Ryan: You may proceed, Mr. Tietz.

By Mr. Tietz:

Q. Now, Mr. Broeske, with respect to the matter of parking automobiles, where do the foremen park their automobiles? A. We park our cars in a lot that the company has rented across the street from the plant.

Q. Do the office people and the manager, the production manager, the personnel manager park their cars there, too?

A. I believe that some of the management park their cars right up close to the plant. There has been a small apron of concrete provided for some of the management right close to the entrance of the plant.

Q. Is it very limited in its facilities? A. It is very limited in area, yes.

Q. Have the foremen at any time had special facilities for parking their cars, other than those of the general employees? A. Yes, for a period of years we had garages provided, the major portion of the foremen, that is, the older foremen with the plant in point of service.

174 Q. That is no longer true, though; is it? A. That is quite so.

Q. Are there any special facilities for foremen as distinguished from the facilities of the general run of workmen, with respect to locker facilities and washroom facilities?

A. The general run of the employees—

Q. They share them with the employees? A. I was adding to your question. What do you mean by that? Re-state it.

Trial Examiner Ryan: Do you want the question read?

The Witness: Yes.

Trial Examiner Ryan: Read the question.

(The question was read.)

The Witness: No, there are no such special facilities.

Trial Examiner Ryan: You use the same locker room and the same washroom the regular employees do under you?

The Witness: Whatever is available to the general run of employees in the plant is available to us.

Trial Examiner Ryan: Is that the only facility that is available to you?

The Witness: Yes.

Trial Examiner Ryan: How about the higher management, do they also use the same locker facilities as the regular employees?

The Witness: No, I know of no local facilities in
175 the plant.

Trial Examiner Ryan: With respect to washrooms and so on, do they use the same facilities as the employees, regular production employees?

The Witness: There is a washroom located in the office that is available to any foremen or any person in the plant that happened to be in that particular part of the plant at any time. It is not special really for anybody.

By Mr. Tietz:

Q. Do you mean there are no "verboden" signs?

Mr. Cook: Just a minute. That isn't what the witness stated. He very honestly stated the office lavatory was open to foremen, the same as anyone else. He didn't state anything like you stated at all, and I object.

Mr. Tietz: I am not testifying. I merely am asking a question.

Mr. Cook: When you ask a question, ask it in accordance with the evidence, not what you want to know.

Mr. Tietz: I am not limited to the evidence. I can go into future things.

Mr. Cook: When you make a statement that has been testified to, make it correctly.

Trial Examiner Ryan: I will sustain the objection.

By Mr. Tietz:

Q. Is there any rule that you know of that forbids
176 the use of any washroom by any employee in the entire plant? A. I know of no such rule.

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J. L. Justice, a witness recalled by and on behalf of the Petitioner.

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Direct Examination

Trial Examiner Ryan: Mr. Justice has testified and been sworn before. He was here yesterday.

Mr. Tietz: Yes, I have been informed of some of the matters on which his examination touched.

By Mr. Tietz:

Q. Mr. Justice, I would like to ask you a question or two about the matter of overtime. Isn't it correct that whenever a foreman believes he could use an employee under him for overtime work, that he fills out a slip about three
177 by five in size, and presents it to the superintendent for his O. K.? **A.** I will have to have the plant or factory manager answer that. I require that anyone go to their supervisor directly over them to get that authorization, where there are five men which have to report to me. Likewise, right down the line. When you get down that far it would be better if Mr. Horner would explain that.

Q. We will pass that for the moment, then. How long have you been connected with the Los Angeles plant of the Young Wire Company? **A.** Since 1936.

Q. Can you tell us how many foremen of this particular plant have been promoted to positions of greater responsibility, or managerial positions? **A.** I can figure it out.

Mr. Cook: You mean in that period?

Mr. Tietz: To his knowledge in that period.

Mr. Cook: I say, in that period?

Trial Examiner Ryan: Since 1936?

Mr. Tietz: Yes.

The Witness: I could do it a lot quicker if I could have a list of the foremen to glance over their names.

Trial Examiner Ryan: Is your question as to how many foremen have been promoted to a higher grade or

how many of the foremen have been promoted from a lower grade to foremen?

178 Mr. Tietz: To a higher grade.

Trial Examiner Ryan: Do you understand that, Mr. Justice? He is asking now about how many foremen since 1936 have been promoted to a grade above foreman.

The Witness: Oh, I didn't understand the question. I am sorry.

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The Witness: There is one I can recall offhand.

Trial Examiner Ryan: Who is that?

The Witness: It is Bob Crittenden.

Trial Examiner Ryan: What was his job? What was he promoted to?

The Witness: Tool design.

By Mr. Tietz:

Q. Can you recall any other instance but that one? A. I don't believe I can offhand.

Q. Now, I will direct your attention to the matter of employing new men, individual employees for the shop. Isn't it true that the personnel manager is the one who interviews and decides whether or not an applicant for a position is to be employed for shop work? A. With the exceptions of the ones he stated while he was on the stand.

179 Q. I didn't hear that. A. With the exception of the ones he stated where he called in the foremen to help him, if he was not sure he had the knowledge with which—

Mr. Cook: In order to clear you up on that, the testimony, which I think the Trial Examiner will bear me out in, is this: If the foremen want to employ extra men, they notify the superintendent. The superintendent, in turn, gets in touch with the personnel director. The personnel director employs the necessary men if they are not skilled men.

If they are skilled men, he brings the foremen from their respective departments, wherever they are located, and the foremen look the men over and interview them to determine whether or not they meet the qualifications he wants in his department. Then if they do meet the qualifications, the personnel director goes along with the necessary paper work to hire them. Is that correct?

Trial Examiner Ryan: That is my understanding.

The Witness: That is correct.

Trial Examiner Ryan: Is that the recollection of your testimony, Mr. Martindale?

Mr. Martindale: That is right.

By Mr. Tietz:

Q. Do you know whether or not the actual determination as to whether the prospective employee is to be employed is made by the personnel manager or by the
180 foreman who looks him over?

* * * * *

The Witness: I would say that if there was a difference of opinion that Mr. Martindale would probably go to his superior before making that decision.

By Mr. Tietz:

Q. Then the decision would not be within the power of the foreman? A. Ninety-nine times out of a hundred it would be.

Q. Within his power to employ the man? A. He is governed a lot by the foreman, what he says regarding it.

Q. That, sir, isn't the question. The question is his power, the foreman's power. Can you give us an answer to that? A. I don't know whether I could give that answer or not.

181 Q. Who would determine the power of the foreman — A. It has never been an occasion which arose, that came up through the steps far enough to reach me, where there was any trouble in that respect of following it out.

Mr. Cook: Therefore, what would happen under a circumstance you don't know?

The Witness: That is right.

By Mr. Tietz:

Q. Aren't you the one who has laid down the policy and the rule of the company with respect to employing men in the shop? A. Yes, sir.

Q. What is the rule and policy that you have laid down? A. For the personnel manager and the foreman to get together on it. If they can't, then it is up to them to go on up to their higher superior.

Q. Would you say I am incorrect in believing that it is the duty and sole duty of the personnel manager to make the decision with the advice, in some cases, but not all, of the foremen? Is my statement correct or incorrect?

* * * * *

The Witness: It would be incorrect.

Trial Examiner Ryan: In what way is it incorrect, 182 Mr. Justice? Would you explain your answer, please?

The Witness: If there was that much of a decision, it would be his responsibility to bring it on up to a higher authority.

Trial Examiner Ryan: Mr. Martindale's duty would be to bring it on up?

The Witness: That is right.

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By Trial Examiner Ryan:

Q. Mr. Justice, I will ask you some questions while Mr. Tietz is doing that. In the ordinary hiring or ordinary employees, not requiring any great degree of skill, Mr. Martindale hires those; does he not? A. That is right.

Q. Now, in the event a skilled man is required for a particular department, does Mr. Martindale in those instances call in the foreman to interview the skilled man, to determine whether he is qualified for the job? A. That is right.

Q. Then if the foreman and Mr. Martindale both agree the man is satisfactory, then Mr. Martindale will hire the man? A. That is right.

Q. But if the foreman says he thinks he is qualified, but Mr. Martindale, for some reason or other, decides he doesn't want that particular man, can Mr. Martindale block
183 the hiring of that man even though the foreman recommends him? A. He would, I am sure, take it up with the factory manager in doing so.

Q. In the instance of it being taken up by Mr. Martindale, the higher supervisor might agree with Mr. Martindale or he might agree with the foreman? A. That is right.

Q. The foreman who wanted the man? A. Depending largely on how bad we needed the man.

By Mr. Tietz:

Q. Did I understand you to answer the Trial Examiner's question in this wise: That if the personnel manager, for any reason whatever, at the end of the interview did not want to employ the prospective employee, he could decline to do so, although the particular foreman called in to interview the man might say, "Yes, I want him"?

Mr. Cook: That isn't what was said at all.

Mr. Tietz: I am asking him. Let him answer.

Mr. Cook: Why don't you have the answer repeated to you, instead of trying to state it erroneously, counsel?

The Witness: Would that be all right, to have her read the answer?

By Mr. Tietz:

Q. I have no objection. Are you able to answer my question or do you want more light thrown on the matter?

A. I would just as soon have it read, what I answered
184 in the first place.

Mr. Tietz: Does the court consider the remark of Mr. Cook as an objection, which you wish to rule on?

Trial Examiner Ryan: I thought that you were withdrawing the question, in preference to having the previous answer read.

Mr. Tietz: I am willing to do that.

Trial Examiner Ryan: Will you read the answer?

(The record was read.)

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Trial Examiner Ryan: Do you want to explain a little further? I will overrule the objection.

* * * * *

185 The Witness: Well, I don't know hardly how you would explain it further. It seems to me like that is explained, the steps that are taken in cases of dispute. As I stated before, there has never been a dispute that went far enough to reach my desk.

By Mr. Tietz:

Q. But the last word is with the personnel manager? He can make the final decision. A. The last word would be with our factory manager, if there was a dispute there. He reports to the factory manager.

Q. You mean that a foreman has the power to raise a dispute and have a higher official than the personnel manager settle the matter? A. Certainly.

Q. That never has happened? A. Not to my knowledge.

Q. Do your regulations provide for that? I will withdraw that. When you say that is your policy, has that ever been embodied in any written rule which you have set forth? A. I don't know as it has. But you come right on through the steps of the organization.

Q. Now, are you familiar with this document (indicating)? A. I will have to admit they handed this to me last night. That was the first time I saw it, and I haven't read it.

186 Q. Doesn't it bear your name on the last page as a co-signer with Mr. Cyrus Horner, your name being above his? A. Maybe I had better read it. I didn't think I had. I haven't read it.

Mr. Cook: Is this a copy, Mr. Tietz?

The Witness: Mimeographed copy. I will have to read it.

Mr. Tietz: Exactly what it is in the scheme of things in the plant, I believe the witness can help us more than any statement on my part.

Trial Examiner Ryan: What is it, Mr. Justice; do you know?

The Witness: It is a personnel department procedure.

Mr. Cook: Do you know where it was drawn?

The Witness: Yes, it was drawn up here at the plant. It is coming back to me now. It was drawn up here at the time we set up our organization charts and procedures, to be followed in each of the departments.

By Mr. Tietz:

Q. Then you can identify it without any more thorough scrutiny of it; is that right?

Trial Examiner Ryan: You have already identified it.

The Witness: Yes.

Mr. Tietz: I ask it be marked for identification as Petitioner's Exhibit 2.

Trial Examiner Ryan: You received that from the company, did you not, Mr. Tietz?

187 Mr. Tietz: No, I received it from Mr. Logan.

* * * * *

By Mr. Tietz:

Q. You are responsible for promulgating this as a procedure of your plant; are you not? A. Yes.

Trial Examiner Ryan: Are you referring to Petitioner's Exhibit No. 2 by the word "this"?

Mr. Tietz: Yes, that is what I am referring to and will refer to hereafter for several questions.

By Mr. Tietz:

Q. Your answer was yes? A. Yes.

Q. Is it proper to state that this is the policy of the plant with respect to the matters set forth in the body of
188 this document? A. Yes, it would be.

Mr. Tietz: This document consists of a four-page mimeographed collection of sheets.

Mr. Cook: As a matter of fact, Mr. Trial Examiner, it is evident from glancing at it it isn't a policy at all. It is a procedure. It is so stated "Personnel Department Procedure".

The Witness: A procedure.

Mr. Cook: That is an administrative procedure; that isn't a policy.

By Mr. Tietz:

Q. In view of the comment made by Mr. Cook, can you tell us, Mr. Justice, if your plant has any policy at variance with any of the statements made in this document entitled "Personnel Department Procedure, Plant No. 9"?

* * * * *

The Witness: It is the procedure they are supposed
189 to follow, laid down.

Trial Examiner Ryan: In so far as you know it is being followed; is that right?

The Witness: That is right.

Trial Examiner Ryan: The procedure that is outlined in Petitioner's Exhibit 2?

The Witness: Yes, sir, that is what I thought I was explaining.

By Mr. Tietz:

Q. I will ask you if the hiring procedure does not contemplate, as set forth here, that the personnel manager is to interview a prospective applicant for employment in the shop, and after the various forms are made out, both by the prospective employee and by the office employee, of the employment manager, personnel manager, and the new employee is given his badge or has a badge assigned to him and a first time clock card made out, that he is then taken —

Mr. Cook: I have been waiting for an end, Mr. Trial Examiner. He is asking if this particular exhibit, Peti-

tioner's Exhibit 2, doesn't state so and so. The exhibit speaks for itself. It has been offered and received in evidence without objection.

Mr. Tietz: I am asking the witness as to his familiarity as to the actual procedure in his own plant.

Mr. Cook: That isn't the question as you asked it. The question you asked was isn't it true this instrument says so and so.

Mr. Tietz: The question relates to that, and the question tests his ability to state his plant has a certain procedure.

Mr. Cook: He has testified that isn't the administrative procedure, under question by the Trial Examiner.

Trial Examiner Ryan: I don't think it is proper to ask the witness what the document contains. The document is in the record and part of the record. It speaks for itself. It is in there, regardless of whether the witness would know whether it is in there or not. If it is being followed, it is being followed, regardless of whether the witness is familiar with each particular detail of the procedure, as outlined therein.

By Mr. Tietz:

Q. Mr. Justice, isn't it true that only after an employee is employed by the personnel manager, that is, he is then introduced to the foreman of the department to which he is to be assigned?

Mr. Cook: You mean in accordance with the procedure contained —

Mr. Tietz: I am asking the question.

By Mr. Tietz:

Q. Is that true or isn't it true? A. I believe that our personnel manager should answer that question on how it is actually being followed.

Q. We are to understand then that you are not certain as to what is the fact in the particular case?

A. If this procedure has been outlined, we take it for

granted he is following it to the letter, or else he would say so.

Q. You do not know, of your own knowledge, whether or not it is being followed? A. I would say it is, or we would know about it. With that copy going to 20 people, approximately, who have to do with this, I would know about it if it isn't being followed.

* * * * *

Cross Examination

By Mr. Cook:

Q. There are many names listed on the left side of Petitioner's Exhibit 2. Are the foremen involved in this case listed there? A. They certainly are.

Q. All of them; is that right? A. Yes, sir.

Q. In addition to that, there are other executives in the offices? A. That is right.

Mr. Cook: All right. Thank you.

192 Trial Examiner Ryan: I don't know whether you offered Petitioner's Exhibit 2 or not.

Mr. Tietz: Yes, we did. I believe there is no objection.

Mr. Cook: No objection whatever.

Trial Examiner Ryan: I will receive Petitioner's Exhibit 2 in evidence, as Petitioner's Exhibit 2.

(Thereupon, the document heretofore marked as Petitioner's Exhibit No. 2 for identification, was received in evidence.)

* * * * *

Waymon B. Martindale, a witness recalled by and on behalf of the Petitioner

* * * * *

Direct Examination

Trial Examiner Ryan: You have been previously sworn and testified in this proceeding, Mr. Martindale; is that correct?

The Witness: Yes, sir.

By Mr. Tietz:

Q. Isn't the general practice of your department to interview prospective employees without the presence of the foremen to which these employees may be assigned
193 at some future time? A. I made the statement with only the exceptions, only exceptional cases where the foremen are called in.

Q. Those exceptional cases are solely where the technical requirements may be such—to use the expression—it might be beyond your depth in using your own judgment as to whether that man would fit in? A. If he is a likely applicant I read his application and I call the foreman in for that purpose, to find out what he thinks of the application and his qualifications.

Q. That is only in a rare case? A. That is all in the departments I defined yesterday.

Mr. Cook: Pardon me. The answer was only in the departments he defined. Do you mean in your testimony yesterday?

The Witness: Yes.

By Mr. Tietz:

Q. Normally you employ the man and thereafter you introduce him to his new foreman? A. Normally, yes.

Q. What departments are there that require the foremen's presence at any time in the employment of a new man, or does it go by departments? A. It goes by departments, yes. The machine shop and maintenance department.

194 Q. And all the other departments? A. And the electrical repair department.

Q. Outside of those departments the foreman is never required to interview or to assist in interviewing a prospective employee before you employ him? A. That is right.

* * * * *

CASE NO. 21-C-2716.

270

Los Angeles, California,
Wednesday, May 15, 1946.

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a. m.

* * * * *

277 (Thereupon, the documents referred to were marked as Board's Exhibits Nos. 1-A to 1-I, both inclusive, and were received in evidence.)

Trial Examiner Hirshfield: Mr. Cook, I notice in your answer here that you deny paragraph 3 of the complaint relating to the outgoing business of the respondent. Is there any particular reason for that?

Mr. Cook: Well, the only thing is that that allegation was not true. Our products are sold in this area, in this state.

Mr. Cobey: I think that will appear, Mr. Examiner, from the stipulation that I am going to introduce.

Trial Examiner Hirshfield: Proceed, Mr. Cobey.

Mr. Cobey: Will you mark this please?

(Thereupon, the document referred to was marked as Board's Exhibit No. 2, for identification.)

278 Mr. Cobey: I have had marked for identification as Board's Exhibit No. 2 a stipulation of facts between the respondent herein and myself as attorney for the Board. This is a stipulation setting forth the facts bearing upon the question as to whether or not the respondent is engaged in commerce within the meaning of the National Labor Relations Act. It is dated today. I would like to offer Board's Exhibit No. 2 in evidence.

Mr. Cook: No objection.

Trial Examiner Hirshfield: It may be received.

* * * * *

281 Mr. Cobey: I would like to offer Board's Exhibit A, a true copy of a letter dated February 27, 1946, from Foremen's Association of America, Chapter 155, to Mr. J. L. Justice, General Manager, L. A. Young Spring & Wire Corporation, Los Angeles, California.

Mr. Cook: No objection.

Trial Examiner Hirshfield: It may be received.

* * * * *

Mr. Cobey: Board's Exhibit No. 5, I would like to offer a true copy of a letter dated March 5, 1946 from C. M. Young, Vice President, L. A. Young Spring & Wire Corporation, to Foremen's Association of America, Chapter 135—I think that can be corrected to 155.

Mr. Cook: Let me see that. 155. I am sorry.

* * * * *

Trial Examiner Hirshfield: It may be received in evidence.

* * * * *

283 (Thereupon, the document heretofore marked as Respondent's Exhibit No. 1, for identification, was received in evidence.)

* * * * *

284 **Warren B. Logan**, a witness called by and on behalf of the respondent.

* * * * *

Direct Examination

By Mr. Cook:

Q. Your name is Warren B. Logan, is it not? A. Yes, sir.

Q. You are president of the Foremen's Association of America, Chapter No. 155? A. I am.

Q. And you are an employee of the L. A. Young Spring and Wire Corporation? A. I am.

Q. And have been for a considerable period of time? A. Yes.

Q. Beginning about when, Mr. Logan? A. 1937.

Q. You have knowledge of the fact that the hourly paid employees of the Company affiliated in a union of the C. I. O., Chapter 809, called a strike at the plant of the Company in Los Angeles on April 17, 1946? A. Yes.

Q. You do acknowledge, Mr. Logan, that on April 19, telegrams were sent to all of the foremen represented by Local 155 in this case appearing in this matter, to return to work in the plant? A. They were sent on the 18th.

Q. Sent on the 18th. Do you acknowledge that? A. I acknowledge that.

Q. You also acknowledge that the foremen refused to return to work, is that right? I think that could be answered, Mr. Logan, if I may suggest, yes or no.

Mr. Cobey: Mr. Examiner, I think the witness should be permitted to amplify his answer beyond yes or no.

Mr. Cook: Mr. Trial Examiner, I don't know that it makes so much difference, that I think that in examining a witness, you are entitled, if the question can be answered yes or no, to have it answered. Counsel for the Board can of course go into any further detail that they desire to.

286 Trial Examiner Hirshfield: Answer yes or no, Mr. Logan. You can amplify your answer thereafter, if you wish.

The Witness: We did not refuse to go in.

By Mr. Cook:

Q. Did they go to work? A. They did not go to work.

Q. They have not been to work at the plant since the beginning of the strike of the hourly rated employees on April 17, is that correct? A. That is right.

Q. Notwithstanding that they received a notice April 18th from the Company to return to work? A. That is right.

Q. Will you tell me why, to give you an opportunity to cover what you want, will you tell me why the foremen involved in this case and represented by your Local 155 of the Foremen's Association of America did not return to work? A. Because the picket line was outside.

Q. The picket line referring to the picket line of the hourly rated people, is that right? A. Yes.

Q. Represented by the local previously mentioned of the C. I. O., is that correct? A. The C. I. O., that is right.

287 Q. Does your Local 155 of the Foremen's Association of America have any direct connection with this local of the C. I. O. representing the hourly rated people?
A. No, sir.

Q. Does it have any indirect connection? A. No, sir.

Q. Then why did the foremen refuse to cross the picket line of the C. I. O. local? A. Because of the fact—the things that you read in the paper, and also the fact that—the results that might come from crossing the picket line.

Q. All right, let's talk about the facts. You say the facts you read in the paper. What do you mean by that?

A. Well, just last week there was an article in the paper about where strikers crossed the picket line and there was a riot following.

Q. Yes, tell me about the facts you read in the paper and the results that follow. What do you mean by that? A. Bodily harm or anything like that.

Q. Were the foremen afraid there might be bodily harm done to them by the hourly rated people, members of the C. I. O., if they crossed the line? A. That is possible.

Q. Were you definitely advised both by the pickets of the C. I. O. union and the management of the Company,
288 both the pickets and the committee of the local representing the hourly rated people stated that there would not be any bodily harm done to anyone? A. Let's see. I have a telegram——

Q. I think you can answer that without reference to anything. A. Well, that is stated in the telegram, what the Company said.

Mr. Cobey: You are referring to the telegram that the Company sent you requesting you to come to work?

The Witness: Yes.

Mr. Cook: May I suggest that without that you certainly can answer that question. Would you read it to him, please?

(Question read.)

Mr. Cook: I might add to that, if the picket line was crossed by the foremen?

Mr. Cobey: So the record may show it, I am handing the witness a copy of a telegram that was sent to Earl Durbin on April 18th by the respondent.

Mr. Cook: I submit, Mr. Trial Examiner, that the question can certainly be answered without reference to a telegram.

Trial Examiner Hirshfield: Can you answer that without that telegram, Mr. Logan?

The Witness: The Company stated in the telegram, I believe, that we could cross the picket line, that under the law we had the right to cross the picket line, but I also had phone calls from the C. I. O., before I received the telephone call from the—the telegram from the Company, telling us not to cross the picket line. They said we could go through the picket line but—that we could go through the picket line, and there would not be anything done to us that day.

By Mr. Cook:

Q. Is that right? A. That is right.

Q. Who did you receive that telephone call from? A. Roy White.

Q. Who is Roy White? A. He is president of the local C. I. O. union.

Q. Representing the hourly paid workers? A. Yes.

Q. Who are on strike in the plant? A. Yes.

Q. Notwithstanding that the foremen did not cross the picket line, is that correct? A. Well, it goes into quite a bit of—

Mr. Cook: Wait. You can answer that, Mr. Logan. Will you read the question?

(Question read.)

A. That is correct.

290 By Mr. Cook:

Q. They did not cross the picket line? A. They did not.

Q. The reason why the foremen did not cross the picket line is because you are in a union, the foremen are in a union, and there is a union involved in the strike. Is that not right, Mr. Logan? A. I wouldn't say that.

Q. Didn't you in the C case state that you would not cross the picket line of the hourly rated people?

Mr. Cobey: You mean the R case.

Mr. Cook: That is right, in the R case, I mean. I am sorry.

Mr. Cobey: Do you recall your testimony? I have the transcript here.

The Witness: I said I would not cross the picket line if it meant bodily harm to myself, and I also stated that at that time I didn't know what I would do at any future date.

By Mr. Cook:

Q. Your reason for not crossing the picket line in this case is because of the fact that your foremen are unionized in the Foremen's Association of America, Chapter 155, and the hourly rated people are unionized under the C. I. O., is that right?

Trial Examiner Hirshfield: Do you understand that question?

The Witness: Yes, I understand that question.
291 Our deciding factor I would say was a copy of a clause in a copy that was sent advising what to do in case of strikes.

Q. May we see it please? A. Yes, sir.

Q. Did the fact that the hourly rated people on strike were unionized and represented by a union of the C. I. O. and the fact that the foremen involved in this case were unionized and represented by the Foremen's Association of America, Chapter 155, have anything to do with your failure to work as requested by the management? A. I don't think it would.

Q. Don't think that had anything to do with it? A. No.

Q. In other words, notwithstanding what you previously said as to what you were advised by Mr. White, the presi-

dent of the local, you refused, the foremen refused to return to work and to cross the picket line, is that correct?

* * * * *

292 The Witness: Yes, notwithstanding Mr. White's telephone call to me, is that right?

By Mr. Cook:

Q. That is right. A. Yes, we refused to go through the picket line. I don't quite understand the last part of that question. If you will read that again?

Trial Examiner Hirshfield: Read the question, please.

(Question read.)

The Witness: We didn't refuse to go back to work, we refused to cross the picket line until such time that the Company could agree with the C. I. O. or the C. I. O. could agree with the Company whereby it would be mutual that we should cross that picket line.

By Mr. Cook:

Q. In other words, did you actually demand that from the Company? A. Yes.

293 Q. You did? Who did you ask? A. We asked Dick Evans to carry that in to the Company.

Q. Who is Mr. Evans? A. Richard Evans. He is superintendent.

Q. Did you get any reply from him? A. We got the reply that the telegram still stood as it was sent.

Mr. Cobey: That telegram that you referred to there is the telegram that was sent by the respondent directing the foremen to report for work on April 19th?

The Witness: Yes.

* * * * *

Q. Mr. Logan, you do know that since April 17th, when the strike commenced, that the office workers have crossed the picket line and entered the plant and engaged in their usual duties? A. Some have and some have not.

294 Q. Practically all of them. A. I can't say what percentage.

Q. You don't know? A. I can't say what percentage. I know some have and some have not.

Q. You don't know whether that is 90 per cent, 80 per cent, or what? A. I couldn't say.

Q. Since the hearing in the R case which took place approximately a year ago, Mr. Logan, you have had many conferences as representative of the Foremen's Association of America, Chapter No. 155, with the representatives of the C. I. O. local representing the hourly rated people in the plant, have you not? A. Just about whether we can cross their picket line or not.

Q. Did you have conferences with them with reference to that? A. We had a conference.

Q. When was that? A. About a week before their strike.

Q. About a week before their strike. You did know before they struck that they intended to strike, is that right?

A. There was a rumor that they were going to have a strike.

Q. Well, you talked with them about it, is that right?

A. Yes.

295 Q. And did they tell you if they wanted you to cross the picket line or not? A. They said as far as they were concerned we could come in the plant.

Q. Do you recall that the C. I. O. supported the Foremen's Association of America, Chapter No. 155 in its organizational efforts, in its efforts to secure bargaining rights in the plant, did they not, from time to time? A. No, sir, not that I know of.

Q. Do you recall your previous testimony in the R case on that? A. I don't.

Q. You don't know whether it is a fact that you, in the R case, said that you had conferences with the representatives of the local of the C. I. O. in reference to collaboration and cooperation between the local of the C. I. O. and the C. I. O. itself, and your Association? A. I don't recall that.

Q. Well, as a matter of fact, you did have published a statement of the local representing the hourly rated workers

agreeing to back you up and cooperate with you, did you not? A. I don't recall any statement like that or any published statement.

Q. You don't remember an article appearing in the
296 C. I. O. paper out here to that effect? A. That was in the C. I. O. paper, but it was——

Q. Yes, welcoming your Association to this organization, do you recall that? A. I recall the paper that you refer to, yes, sir.

Q. In addition this local has from the beginning evidenced that kind of cooperation, has it not, with your Association? A. There is no connection whatever between our Foremen's Association——

Q. Just answer the question yes or no, please, Mr. Logan.
Mr. Cook: Would you read the question?
(Question read.)

By Mr. Cook:

Q. The local has evidenced the fact that it did agree with your organization of Chapter 155 and the unionization of the supervisory people, that is right, isn't it? A. They are agreeable to the fact that we are organized.

Q. That is right. Now prior to this particular strike that started April 17th of hourly rated workers, has there been any strike in the plant of the L. A. Young Spring & Wire since the beginning of your employment with the Company?
A. No.

Q. You and other foremen involved in this case, in addition to your regular duties which were fully and specifically stated in the R case, you took part in the grievance
297 procedure involved under the contract between the Company and the C. I. O. union representing the hourly rated workers, didn't you?

* * * * *

A. The grievance of a worker is taken up with the foreman first.

Q. That is right. A. Then after that it goes to the——

Q. Since the start of this strike, have the foremen attempted in any way to go into the plant to determine whether or not the working facilities and plant equipment are being protected? A. I don't believe so.

Q. Have the foremen congregated outside of the
298 plant of the Company since the strike commenced on April 17th? A. They congregated at the call of that telegram, the telegram of the Company.

Q. Across the road from the entrance to the plant? A. Yes.

Q. That was about when, April 18 or 19? A. That was the 19th.

Q. And comingled with the pickets of the hourly rated union, is that right? A. Well, the pickets were all over the place.

Q. The foremen in this case were conversing and talking with the pickets, were they not? A. They possibly were.

Q. That is right. Do you agree that the strike called by the hourly rated workers and their union is proper in this case?

Mr. Cobey: Object to that question as immaterial to the issues in this proceeding.

Trial Examiner Hirshfield: Objection sustained.

Mr. Cook: I think I am definitely entitled to have the statement of the president of the local in regard to that. It is tremendously important in the consideration of the particular issues involved in the case.

Trial Examiner Hirshfield: I sustained the objection.

Proceed.

299 Mr. Cook: I think that is all, except that I would like the record to show that had it not been for the objection and the Trial Examiner's ruling I intended to proceed further with this line of questioning, to show that there has been definite evidence on the part of the foremen that they are cooperating with and aiding and assisting the hourly rated workers and the union representing the hourly rated workers in the present strike in the plant.

That is all.

: Trial Examiner Hirshfield: Cross examine.

Cross Examination

By Mr. Cobey:

Q. Mr. Logan, in your direct examination you referred to a conference that was held a week before the strike between the——

Mr. Cook: May I correct that? It was cross examination under the statute.

Mr. Cobey: Well, Mr. Cook is not familiar with the California practice. In California we allow an examination under CC 82355 of a hostile witness on direct as though it were cross.

Mr. Cook: Well, a technicality.

Mr. Cobey: It is the same thing.

Mr. Cook: Yes. I will concede that Mr. Logan's testimony speaks for itself.

Mr. Cobey: All right.

300 By Mr. Cobey:

Q. Mr. Logan, you referred in your answer to Mr. Cook's interrogation about the conference that was held a week before the strike between yourselves and some representative of the production workers union in the plant? A. Yes.

Q. Who was present at that conference? A. The executive committee of the Foremen's Association, Chapter 155, and the Committee for the C. I. O.

Q. Where did it take place? A. It took place in the millwright department.

Q. And at what time, if you know? A. About 3:35.

Q. 3:35. Was that during work hours? A. No, sir.

Q. Who was present representing the production workers union? You were referring to the Local 809, is it? A. Local 809. Roy White.

Q. He is the president of the local? A. President, and Upton.

Q. What is Upton's capacity? A. He is one of the committeemen. I can't name all the committeemen. I don't

know all their names. Possibly I could get that for you.

301 Q. And what happened at that conference? A. Because there had been a rumor of a strike we wanted to know whether they were going to let us through the line in case they had a strike, and they said that they had no objection to our coming in the plant, and that is about all there was said there.

Q. Now, you also referred to a telephone call that you received on Thursday, April 18th, or thereabouts, from Roy White, is that right? A. That is right.

Q. And what did he say to you in that telephone conversation? A. He said he didn't want us—he said we could go through the line but he didn't want us to go through the line. He said nothing would happen to us the next day if we went through. He said after that—just didn't finish his question.

Mr. Cook: Will you read that?

(Answer read.)

The Witness: He said "after that", and then he didn't finish his conversation.

By Mr. Cobey:

Q. Do you recall whether or not in that conversation he referred to the fact that the foremen were to receive a telegram directing them to report to work? A. He said, he asked me if I had received a telegram. I said, no. He
302 said that I would probably receive one to go back to work, so I gathered the fact that the C. I. O. and the Company had already had a conference.

* * * * *

By Mr. Cobey:

Q. After receiving this call from Mr. White, did you receive any calls from the members of Chapter 155? A. Oh, yes. I started receiving a number of calls from all the different foremen. They wanted to know what they were going to do. I also received one from Manley and —

Q. He is a foreman? A. He said he had called Dick Evans.

* * * * *

303 The Witness: I know what it is. Mr. Manley said he would call Richard Evans, the superintendent, and see why it was we received such telegrams, when he had been told before we left the plant that if the C. I. O. union objected to our going across the line, not to come back until further notice.

By Mr. Cobey:

Q. Who told you that? A. Mr. Horner.

Q. He said that to you personally? A. Yes, and he told that also to all the other foremen.

Q. When and where? A. In the office at lunch time, when we went to lunch.

* * * * *

304 The Witness: That was on the 17th.

By Mr. Cobey:

Q. That was on the 17th? A. On the 17th, at noon.

Q. I see. As I understand, the strike of Local 809 commenced on Wednesday, April 17th? A. Yes.

Q. Around what time, do you remember? A. Approximately 9:30 in the morning.

Q. Was the picket line formed at that time? A. I didn't go outside, but it was formed immediately afterwards.

Q. Do you happen to know whether or not the production workers that are in the union represented by Local 809 ceased work at that time? A. Yes, they did.

Q. All production operations in the plant ceased generally about that time? A. Everything stopped.

Q. About what time of the day was this? A. About 9:30 in the morning.

Q. About 9:30 in the morning on April 17th? A. Yes.

Q. And you say that the foremen in the plant had a conference with Mr. Horner that same morning or at noon?

A. Yes. They stood around the plant for some time,
305 then around noon they gathered in his office to find out what they were going to do, and especially the hourly foremen wanted to find out if they were going to be paid.

Q. Do you happen to know whether or not all the foremen were at this conference? A. I wouldn't say that all of them were there. Some of them were still back in the shipping department.

Q. Do you think the great bulk of them were there? A. The bulk of them were there.

Mr. Cook: This again is on what date, Mr. Cobey?

The Witness: On the 17th.

Mr. Cobey: On the 17th.

By Mr. Cobey:

Q. Who is Mr. Horner? A. Mr. Horner is the plant production manager.

Q. What was the time of this conference? A. About 11:00, between 11:00 and 11:15.

Q. What did Mr. Horner tell the foremen at that time? A. He told them if they went out to lunch and couldn't get in through the line to wait for a call, the Company would let them know when to come back.

Q. You were present at that conference yourself? A. Yes.

Mr. Cook: Again that was on April 17th?

The Witness: Yes.

Mr. Cobey: Yes, on April 17th. That is the date.

306 By Mr. Cobey:

Q. In regard to this conference with Mr. Horner on April 17th, Mr. Logan approximately how many foremen or assistant foremen were employed at the local plant of the respondent? A. There were about 21.

Q. About 21 foremen? A. About 21 foremen.

Q. Were they all on the day shift? A. No, some on the night shift.

Q. About how many on the night shift, do you know? A. About five on the night shift.

Q. So there were about 16 on the day shift at that time? A. Yes.

Q. Would you be able to estimate about how many of the 16 were in the office at that time, at that conference? A. I would say about 11, 11 or 12.

Q. 11 or 12 of them. What was said by Mr. Horner with respect to the pay of the hourly rated foremen? A. He said they were expecting a call from Detroit, and to wait until that came through.

Q. How many hourly rated foremen were there? A. There were three, I think.

Mr. Cook: Pardon me, when?

The Witness: I would say there were three just at that time.

307 Mr. Cook: The record again shows that the last conversation is on April 17th, also?

Mr. Cobey: Yes.

The Witness: The assistant foremen on nights are hourly paid.

By Mr. Cobey:

Q. How long did you remain at the plant on April 17th? A. Until about 3:00 o'clock.

Q. About 3:00 o'clock.

A. 3:00 o'clock.

Q. Do you know how many foremen remained there as long as you did? How many of these foremen and assistant foremen? A. The hourly men are the ones that stayed that long, waiting for the call to come through from Detroit.

Q. What happened to the others? A. The others went to lunch and didn't come back through the line.

Mr. Cook: What was that last, didn't come back through the line?

The Witness: Didn't come back through the line. They were instructed not to by Mr. Horner if the pickets asked them not to come through the line.

By Mr. Cobey:

Q. So then about three o'clock you and the other
308 two hourly rated foremen left the plant as well? A.
Yes.

Q. At that time you had received no instructions from the Company about reporting to work? A. No, they said that as far as being paid was concerned, that we would be paid until further notice.

Mr. Cobey: Will you please mark this for identification, as Board's Exhibit 6? I think you are familiar with this.

(Thereupon, the document referred to was marked as Board's Exhibit No. 6, for identification.)

Mr. Cook: No objection.

By Mr. Cobey:

Q. Mr. Logan, I hand you a telegram which is addressed to Mr. Earl Durbin, and I ask you to examine the telegram and ask you whether or not you received an identical telegram from the Company on Thursday, April 18th, that is from the respondent? A. I did.

Mr. Cobey: I would like to offer Board's Exhibit No. 6 in evidence.

Trial Examiner Hirshfield: It may be received.

Mr. Cook: No objection.

(Thereupon, the document heretofore marked as Board's Exhibit No. 6 for identification, was received in evidence.)

By Mr. Cobey:

Q. Mr. Logan, you previously testified as to a tele-
309 phone call from Mr. Manley. Did you or did you not receive any further telephone calls from members of Chapter 155 on Thursday? A. Yes, I did, I received several calls from different members.

Q. This is Thursday, April 18, 1946. You received several other calls? A. Several other calls, yes.

Q. What were those calls about?

Mr. Cook: Again I assume that our objection continues to this line of examination as being wholly irrelevant and

immaterial, self-serving, not in any way binding on the Company.

Trial Examiner Hirshfield: You have a continuing objection, Mr. Cook.

A. I received several calls and they all wanted to know what to do about the next morning.

By Mr. Cobey:

Q. Pardon me? A. Also when I spoke to Mr. Manley he said he would talk to Dick Evans, who is the superintendent, and find out more about it.

* * * * *

310 The Witness: I received a second call from Mr.
Manley who had talked with Dick Evans, and Dick
had instructed him to meet him outside the plant in
311 the morning, for us to meet with him and not go
to the plant.

Mr. Cook: Again this was the 18th?

The Witness: Yes, this was Thursday, April 18th. We were to report on Friday. Before we went in Evans told us to meet outside the plant and he would go and find out why the Company had sent those telegrams.

By Mr. Cobey:

Q. What did you tell the members of your Chapter that called up?

Mr. Cook: Objection.

The Witness: I told them to meet outside of——

Trial Examiner Hirshfield: He may answer.

A. I told them to meet outside of the plant in the parking lot.

Q. Now, calling your attention to the following morning, which would be Friday——

Mr. Cook: Pardon me. Will you establish the time on April 18th that this conversation occurred?

Mr. Cobey: Yes. Can you establish that? Which conversation do you mean?

Mr. Cook: The conversation that was supposed to have been had with Mr. Evans.

Mr. Cobey: With Mr. Evans? If you prefer, Mr. Cook, I will call Mr. Manley to the stand a little later and establish it through him.

Mr. Cook: I don't want to take the time to do it.

312 The Witness: It occurred through the evening.

By Mr. Cobey:

Q. It occurred through the evening? A. Yes.

Mr. Cook: What time in the evening?

The Witness: I couldn't say exactly what time.

By Mr. Cobey:

Q. Do you recall what time Manley called you the first time or did you call him? A. I think Mr. Manley could testify better to that.

Mr. Cook: I am perfectly willing for you to consult with Mr. Manley right now, in order to save time.

Mr. Cobey: Mr. Cook, Mr. Manley has just informed me that he called Mr. Logan around 5:00 o'clock that evening and then that he called Mr. Evans—when did you call Mr. Evans?

Mr. Manley: Right after I talked to him.

Mr. Cobey: After you talked to Mr. Logan, then you called Mr. Evans, then called Mr. Logan back, is that correct?

Mr. Manley: Yes.

Mr. Cobey: That was around 5:00 o'clock. Is that agreeable to you?

Mr. Cook: Perfectly agreeable.

By Mr. Cobey:

Q. Now, calling your attention again to the morning of Friday, April 19, 1946, can you tell me what time you
313 reported down at the plant of the respondent, if you did so? A. It was about 8:05. I was a little late that morning.

* * * * *

By Trial Examiner Hirshfield:

Q. What were your working hours at the shop? A. From 7:00 until 3:30.

Q. What time did the night shift start? A. The night shift starts at 4:00 o'clock.

Q. And works till? A. Works till 12:30.

Mr. Cobey: I will call the Examiner's attention to the fact that the telegram directed them to report for work at 8:00 o'clock a. m. Friday.

By Mr. Cobey:

Q. When you arrived down there, Mr. Logan, what did you do?

* * * * *

A. We waited until Richard Evans came out. Richard Evans had already gone in to talk to the Company about whether we would come in or out.

314 Q. This is Richard Evans, the day superintendent of the Company? A. Yes. We also received from the C. I. O. a pamphlet asking us again to not go through the line.

Q. When you say we, who do you mean by we? A. All the foremen that was there at that time.

* * * * *

Mr. Cobey: I have marked for identification as Board's Exhibit No. 7 a yellow sheet of paper, which I now hand to Mr. Logan, and I ask Mr. Logan whether or not this is what you referred to as the pamphlet? A. Yes.

Mr. Cook: I have no objection to it.

By Mr. Cobey:

Q. Mr. Logan, Board's Exhibit No. 7 which you have identified is a leaflet of the C. I. O.? A. Yes.

315 Q. Was that distributed by people in the picket line? A. They brought it to us in the parking lot.

Q. They brought it to you in the parking lot? A. Yes.

Mr. Cook: You said distributed to the foremen?

Mr. Cobey: I just said distributed. I didn't say to whom, did I?

Mr. Cook: Will you read that question?

(Question read.)

By Mr. Cobey:

Q. Distributed by the people in the picket line, and your answer was that they brought it to you in the parking lot?

A. Yes.

Q. Who was in the parking lot at that time? A. Well, the foremen and also there was a kitchen they had set up for the strikers there. We didn't know that when we designated the spot.

Q. When did you designate that spot? A. The night before.

Q. In other words, you told the persons that called you up, that is the members of Chapter No. 155 who called you up, to meet there in the parking lot? A. Yes.

Q. And the parking lot is across the street from the plant? A. It is not directly. It is across the street but up the street a little ways, just about a quarter of a block.

316 Mr. Cobey: I would like to offer in evidence Board's Exhibit No. 7.

Mr. Cook: No objection.

Trial Examiner Hershfield: It may be received.

(Thereupon, the document heretofore marked Board's Exhibit No. 7 for identification, was received in evidence.)

By Mr. Cobey:

Q. Do you know whether or not all the day foremen or all the foremen and assistant foremen of the local plant reported down to the plant that morning?

Mr. Cook: Reported down where?

The Witness: To the parking lot.

By Mr. Cobey:

Q. They came to the parking lot? A. Yes, there were two that did not receive their telegrams in time to get there that I know of.

Q. Who were they? A. There was Cook, Boyd Cook, and there was one other man, I think it was Tassen, I am not sure, or was it you? Freeman.

Q. Boyd Cook and Freeman, but aside from them all the foremen or assistant foremen were there? A. As far as I know, yes. They didn't call any roll.

Mr. Cook: When you say there you mean where?

Mr. Cobey: At the parking lot.

By Mr. Cobey:

Q. Can you tell us, Mr. Logan, whether or not at
317 this time all the foremen and assistant foremen employed by the respondent's local plant were members of Chapter 155? A. There were some new foremen that had just been put on nights that were not yet members.

Q. When you say new night foremen, you mean assistant foremen? A. Night assistant foremen.

Q. And aside from your night foremen, the foremen and assistant foremen were members at this time of Chapter 155? A. Yes.

Q. I think you previously testified that at this time there were 21 foremen and assistant foremen? A. Yes.

Q. Of those 21 how many were members? A. 16.

Q. Were they members in good standing of Chapter 155? A. Yes, members in good standing.

* * * * *

By Mr. Cobey:

Q. How many foremen and assistant foremen were there at this meeting at the parking lot?

* * * * *

318 Mr. Cook: Oh, I would withdraw the objection.

The Witness: There were about 18 there.

By Mr. Cobey:

Q. About 18? A. Yes.

Q. Foremen and assistant foremen? A. We didn't have a roll call that morning.

Q. Can you tell us, Mr. Logan, what happened after the 18 foremen and assistant foremen assembled in the parking lot?

* * * * *

The Witness: We waited for Mr. Evans to come out of the plant. His answer was that the telegram of the Company still stood.

Mr. Cook: Was that that telegram from the Company what?

The Witness: Still stood as it read. So we decided to call the office back in Detroit of the Foremen's Association.

* * * * *

320 The Witness: We got the telephone call through to Mr. Vallance.

Mr. Cook: What is his name?

The Witness: Vallance.

Mr. Cook: Pardon me. I had forgotten who he was.

The Witness: He is the vice president of the Foremen's Association of America, National.

By Mr. Cobey:

Q. He is in charge of this area, is he not? A. He is in charge of our chapter anyway. I don't know how many chapters he has. I read the telegram to him over the telephone. He told us to apply for unemployment insurance, to see if we were being paid or not. He also told us we could go into the plant, but I don't think he understood us, and it was rather mixed up, because we could not apply for unemployment insurance and also go into the plant too. We came back to the parking lot and conferred with the committee of the C. I. O. and asked them to let us through. They said that they still didn't want us to go through. From

there we went to make another telephone call to Detroit again, accompanied by Mr. Kahn.

Q. Who is Mr. Kahn? A. Mr. Kahn is the national man of the C. I. O. He was going to call.

321 Q. Can you tell me whether or not he is the international representative or business agent for the United Automobile Workers? A. I believe he is the business agent of some sort, I couldn't say exactly what his position was.

Q. Can you tell me whether or not he was directing the activities of the Local 809 picket line at that time? A. Yes.

Mr. Cook: When you say local, you mean the local of the Auto Workers?

Mr. Cobey: That is Local 809, as I understand.

Mr. Cook: That is right.

Mr. Cobey: Local 809 has no membership outside of the plant, has it?

Mr. Cook: Not that I know of.

The Witness: He was directing the strike.

By Mr. Cobey:

Q. He was directing the strike? A. Yes. He was going to talk with Vallance again to find out just their views on it.

Mr. Cook: Who was going to talk to him?

The Witness: Kahn.

By Mr. Cobey:

Q. Mr. Kahn? A. We could not reach Mr. Vallance at that time. Mr. Holland who was with us called his wife —

322 Q. Who is Mr. Holland? A. Mr. Holland is the secretary of our Association, or of our chapter. He called his wife —

Q. A foreman employed by the respondent at its local plant? A. Yes, that is right, as we did not have this paper and we knew he had in his files. He called her and had her read the paper to us over the phone, and when we came to a certain section, that is C, I believe, where it said unless it is

mutually agreed we should not go through the line, we decided then and there not to go through the line.

Q. Mr. Logan, I hand you two mimeographed sheets bearing the heading of Foremen's Association of America, National Office, which I will ask be marked for identification as Board's Exhibit 8, entitled statement of policy.

(Thereupon the document referred to was marked as Board's Exhibit No. 8, for identification.)

I show those to you and ask you whether or not this is the instructions that you referred to in your immediately preceding testimony. A. Yes.

Mr. Cobey: I think you have had an opportunity to inspect this.

Mr. Cook: I have made a casual examination. Exhibit No. 8 as stated by Mr. Cobey appears to be instructions from the National Office of the Foremen's Association of America, to their local chapters, which certainly is, not in any way relevant or material to the issues here, and we object to it.

Mr. Cobey: I would like to offer Board's Exhibit No. 8 in evidence for the purpose of showing why Chapter 155 respected the picket line of Local 809.

Trial Examiner Hershfield: It may be received.

(Thereupon the document heretofore marked as Board's Exhibit No. 8 for identification was received in evidence.)

By Mr. Cobey:

Q. Mr. Logan, after learning of the instructions, what did you then do? A. We sent Mr. Evans back in the plant.

* * * * *

By Mr. Cobey:

Q. You said you sent Mr. Evans back in the plant? A. To tell them that until they had mutually agreed between the Company and the C. I. O. to cross their lines, we would stay out.

Q. Where did you contact Mr. Evans? A. In the parking lot.

Q. At the parking lot? A. Yes.

Q. Did he come out from the plant? A. Yes.

324 Q. Did you request him to come out? A. Mr.

Evans was there in the morning when we arrived, and he was taking messages into the Company.

Q. He took the message into the Company in the morning? A. Yes.

Q. And then what time was it that he returned after you learned of these instructions, to the parking lot? A. Approximately 1:00 o'clock.

Q. It was about 1:00 o'clock? A. When we got those instructions, yes.

Q. And at that time did you inform your membership of those instructions? A. Yes.

Q. And Mr. Evans was in the parking lot at that time? A. Yes.

Q. And you then asked Mr. Evans to go back into the plant and inform the Company of these instructions? A. Yes.

Q. And did Mr. Evans return to the plant? A. He did.

Q. Did you request Mr. Evans to return and tell you what the Company wanted to do? A. We just expected that he would.

Q. You expected that he would. Did you wait for
325 him to return? A. Yes.

Q. How long did you wait? A. It was about I would say an hour and a half, because at that time I had to get in line with the C. I. O. members to get my paycheck.

Q. I see. You got in line with the C. I. O. members, you mean the company formed a pay line at that time? A. Yes.

Q. And paid off its employees? A. That is right.

Q. Throughout this morning, which is the morning of Friday, April 19, 1946, that is from 8:00 o'clock until 1:00 o'clock, your membership had remained in the parking lot, is that correct, or thereabouts, in that vicinity? A. Thereabouts, yes.

Q. They had not participated in the picket line, had they? A. No, sir.

Q. Did you or any other officer of your chapter have any conferences with the Local 809's representatives except those which you have already testified to, during that morning? A. Casual conversation with the rank and file people that we knew, but no conferences except with the committee.

Q. And those conferences were concerned exclusively with the question as to whether or not you should
326 recognize the picket line?

Mr. Cook: Just a second. I think that might be considered just the least bit leading.

By Mr. Cobey:

Q. What were those conferences concerned about? A. Their consent, I will say, to go through the picket line.

Q. You testified that you remained there until about 2:30. That is when you say you, you mean you and other foremen? A. Some of them left because they didn't have to wait. They are salaried employees.

Q. I see. A. They later called me up and asked me what it was.

Q. About how many of you waited around for an hour and a half then, until about 2:30? A. I would say there was about four or five of us.

Q. At that time you had received no word from the Company? A. Not until Dick came out about 2:30.

Q. Dick, you mean Mr. Evans came out at 2:30? A. Came out at 2:30.

Q. And that is the Mr. Evans you previously testified about? A. Yes.

Q. What did he tell you about at that time? A. That the telegram still stood as it read.

327 Q. Had the representatives, the official representatives of Local 809 indicated any change in their position from that indicated in Board's Exhibit 7? A. Is this Exhibit 7 here?

Q. Yes. A. No, they had not changed their position.

Q. In other words, they still did not want you to cross the picket line? A. That is right.

Q. And it was some time between 2:30 and 3:00 o'clock that you left the vicinity of the plant? A. That is right.

Q. Have you returned there since then? A. No, sir.

Q. Do you know whether or not any of the foremen have or assistant foremen? A. I couldn't say whether they have or not.

Mr. Cook: What do you mean by returned, reported to the plant or outside the plant.

Mr. Cobey: Reported.

The Witness: To work or —

By Mr. Cobey:

Q. Have any returned to work? A. No.

Mr. Cook: That applies to all the foremen?

The Witness: Yes.

328 By Mr. Cobey:

Q. In other words, what I really want to know is whether any had crossed through the picket lines, to your knowledge. A. I don't know whether they went in to get their pay if they had pay coming. I don't know whether they went in to receive it or not. I would have to have somebody else testify about that.

Q. That is the salaried foremen? A. I don't know how they received it.

Q. Do you know whether or not the local plant of the respondent has been in operation since April 17? A. To my knowledge it has not been.

* * * * *

Mr. Cobey: Is the Company willing to stipulate that the plant has not been in operation since April 17th?

329 Mr. Cook: The Company will stipulate that the hourly rated workers have not reported to work since then, when the strike began, but of course won't stipulate that there was not work for the foremen. As a matter of fact, the foremen were called to work, as has been recited and offered in evidence by yourself.

Mr. Cobey: Perhaps we will have to call some official of the Company to find out what operations have been conducted since April 17th.

Mr. Cook: It is perfectly obvious that that would be immaterial, because certainly you could not conduct operations that you normally conduct with the foremen if the foremen were not there, and it is very definitely stated that they were not.

Mr. Cobey: Are you willing to stipulate none of the production workers were there either?

Mr. Cook: I think that is true, yes.

Mr. Cobey: So that since April 17th none of the workers that these foremen and assistant foremen normally supervise have been there, is that correct?

Mr. Cook: If the production workers were not there and they supervise the production workers, which we assume is true, that is correct.

Mr. Cobey: These foremen do, do they not? Mr. Examiner, I could go into these events of the morning of Friday, April 19th, with a little more particularity and
330 identify who was listening to Mr. Logan when he made these telephone calls that he has described, but as I understand it, Mr. Cook's objection goes to the relevancy rather than to the accuracy of his testimony, but if he desires I can identify with a little more particularity the times when these telephone conversations occurred and who was present when the call was made.

Mr. Cook: About the last hour has been devoted to the events of April 19th, and he stated that Mr. Kahn, the International Representative of the C. I. O., was present when he called Mr. Vallance on the telephone, and so on and so forth. I don't know what greater particularity you could go into.

Mr. Cobey: I mean if you are interested in knowing or if the Examiner is interested in knowing I could bring out by examination of Mr. Logan just who the individuals were who were present during the telephone conversations and the exact time that they occurred.

Mr. Cook: You have already been over it very carefully, what in my opinion is rather unimportant. But however that is up to you.

Trial Examiner Hirshfield: Well, I think we have got enough on it.

Mr. Cobey: I mean I don't want to unduly prolong the record, but I am not attempting to shift my burden
331 at all, and if you feel that there is no need identifying the people who were present at the conversations that he referred to —

Trial Examiner Hirshfield: What would your purpose be?

Mr. Cobey: Merely to identify them with greater particularity for the purpose of cross examination, if Mr. Cook wants to cross examine.

Mr. Cook: That will be up to me.

Trial Examiner Hirshfield: Go ahead. I think you have your answer now.

By Mr. Cobey:

Q. Mr. Logan, will you tell me whether or not you advised Mr. Vallance of the action of your chapter? A. Yes, I did.

* * * * *

332 The Witness: I wrote a letter and advised him what we had done, and I also sent a telegram after a meeting, we had a regular meeting when the body had asked me to send a telegram stating that — in this telegram I stated —

Trial Examiner Hirshfield: Just a minute.

The Witness: I asked him if there had ever been a setup between the Foremen's Association and the C. I. O.

* * * * *

334 The Witness: Has an arrangement ever been made between the Foremen's Association and the C. I. O.
335 for the foremen crossing the C. I. O. picket lines?

* * * * *

The Witness: I also stated in that telegram that salaries of plant A foremen have been cut off. Is there anything you can do. I received a telephone call the next morning.

By Mr. Cobey:

Q. What morning was that? A. That was—this is dated the 10th, so it would be the morning of the 11th, May 11th.

Q. May 11th?

* * * * *

By Trial Examiner Hirshfield:

Q. Mr. Logan, when did you send the telegram? A. On May 10, 1946.

Q. And you received an answer on May 11th by means of a telephone call? A. By telephone. He said under the circumstances there wasn't anything we could do but to ride out the strike situation.

336 Mr. Cook: But to ride out the strike situation?

The Witness: Ride it out.

Mr. Cook: R-i-d-e?

The Witness: Ride out the strike situation.

Mr. Cobey: That completes my cross examination of Mr. Logan.

Redirect Examination

By Mr. Cook:

Q. Mr. Logan, you testified I believe that about a week prior to the strike which began April 17th that you had heard rumors that the men were going to strike and you called a meeting of the committee of Local 809 and the executive committee of Foremen's Local 155, is that correct? A. Yes.

Q. Your purpose for calling this meeting was to determine whether it would be agreeable, in the event of the strike, with Local 809 for the foremen to cross the picket line, is that right? A. I would say their attitude.

Q. And their attitude was important to you, is that right? A. Naturally, when it comes to crossing a picket line.

Q. If they didn't want you to cross it you wouldn't? A. If it meant bodily injury, no.

Q. And if it did not, you wouldn't cross the picket line either, would you? A. No, I don't believe I would.

337 Q. That is right. Now you say there were about 21 foremen and assistant foremen employed in the plant on April 17th, is that correct? A. Yes.

Q. And what was the number previous to V-J Day? A. I couldn't say offhand the exact number.

Q. It was the same, was it not? A. Yes, about the same.

Q. That is right. Now, the business of the Company fell off tremendously, did it not, after V-J Day? A. Yes.

Q. And there was very little work in the plant between V-J Day and approximately April 17th, the date of the strike, is that right? A. That is right.

Q. Notwithstanding that, during that time every single hourly rated foremen and salaried foremen were retained at their work in the plant and paid, is that right? A. Right, except some that were let go.

Q. Who was let go? A. Well, let's see, there was Schwartz.

Q. Who was Schwartz? A. Emmett Schwartz was the welding foreman.

Q. That was right, and there was no welding at all
338 after that, was there? A. That is right.

Q. There was no welding or anything else to be done? A. That is right.

Q. Had you ever in any other employment as a member of the supervisory staff of the Company been so employed when there was a strike of the hourly rate paid production workers of the plant? A. No.

Q. Never before? A. No.

Mr. Cook: That is all.

Trial Examiner Hirshfield: Any recross?

Recross Examination

By Mr. Cobey:

Q. Have you ever been employed as a foreman at a plant before when there was a strike of production workers?

Mr. Cook: He just said he had not.

The Witness: No.

By Mr. Cobey:

Q. In regard to this meeting that took place prior to the strike between the leaders of Local 809 and your executive board, how was that arranged?

Mr. Cook: I submit, Mr. Trial Examiner, that that was gone into very definitely and fully by Mr. Cobey.

The Witness: I asked the —

Trial Examiner Hirshfield: Well, go ahead.

339 The Witness: I asked the chairman or the president of the local to get their committee together, that our executive board wanted to talk with them.

* * * * *

Mr. Cobey: I think the record should show, perhaps it does, that identical telegrams were sent to all the foremen employed by the respondent directing them to report for work.

Mr. Cook: Right.

* * * * *

342 **Emmett F. Manley**, a witness called by and on behalf of the National Labor Relations Board * * *

Direct Examination

By Mr. Cobey:

Q. Will you state your name and residential address? A. Emmett F. Manley, 1141 South Arizona Avenue, Los Angeles.

Q. Mr. Manley, you are now employed by the respondent in the proceeding? A. Yes, sir.

Q. In what capacity? A. As foreman.

Q. At the local plant? A. Yes, sir.

Q. You were present, were you not, during the testimony of Mr. Logan? A. Yes.

Q. Do you recall that Mr. Logan testified that you telephoned him some time during the evening of Thursday, April 18, 1946? A. Yes.

Q. Will you state when you called Mr. Logan? A. It was right around 5:00 o'clock.

343 Q. Around 5:00 o'clock in the evening? A. 5:00 o'clock in the evening.

Q. And what did you say to Mr. Logan at that time? A. Well, I told Warren that Horner, the production manager, had called me and informed me they were sending telegrams out for us to report to work the next morning.

Q. Did you or did you not thereafter call Mr. Richard Evans? A. I did, yes.

Q. And Mr. Richard Evans, is he your superintendent? A. That is right.

Q. At the respondent's local plant. What did you say to Mr. Evans? A. Well, I asked him what was the—how come they were sending the telegrams out when they had instructed us not to cross the picket line.

Q. What did he say? A. He didn't know any more about it than I did, but he said he would find out the next morning before we came in.

Q. Did you thereafter call Mr. Logan again? A. Yes.

Q. About what time was that, do you know? A. Probably 5:30 again.

Q. And then you informed Mr. Logan at that time
344 what Mr. Evans had told you? A. I did.

Q. What did Mr. Logan tell you? A. He said we would meet out there in the parking lot until Dick came out and gave us an answer.

* * * * *

III.

EXCERPTS FROM EXHIBITS**CASE NO. 21-R-2816****Board Exhibit No. 1-B**

200

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

**PETITION FOR CERTIFICATION OF
REPRESENTATIVES**

The undersigned Petitioner hereby alleges that the Employer named below has refused to recognize Petitioner as the exclusive collective bargaining agent of all the employees in the bargaining unit hereinafter described and that such refusal has given rise to a question concerning representation affecting commerce within the meaning of the National Labor Relations Act. Pursuant, therefore, to Section 9(c) of said Act, Petitioner requests the National Labor Relations Board to investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

Case No. 21 R 2816**Docketed 4/4/45**

1. Name of employer L. A. Young Spring and Wire Corp.
2. Address of establishment 3200 East Slauson Avenue, Los Angeles 11, California.
3. Industry Manufacture of bombs and aircraft parts and assemblies.
4. Petitioner Foremen's Association of America, Chapter No. 155 (Indicate affiliation, if any)
5. The alleged appropriate bargaining unit (describe below groups of employees or individual job classifications) Includes All foremen and assistant foremen of the company at its plant No. 9, located at 3200 E. Slauson Avenue, Los Angeles, California.

6. The Unit contains approximately 22 employees, of which number 22 have designated or selected petitioner as their bargaining representative.

7. The following individuals or labor organizations claim to represent employees in the Unit:

(Name and affiliation, if any) None

.....
(Address)

(Contract expiration date)
.....

(Name and affiliation, if any)
.....

(Address)

(Contract expiration date)

By Warren B Logan

WARREN B. LOGAN, *President*

(Signature and title of petitioner's representative)

8448 San Louis, South Gate, Calif.

(Address)

Jefferson 0475

(Telephone number)

Subscribed and sworn to before me this 4th day of April, 1945, at Los Angeles, California.

David L. Bingham

DAVID L. BINGHAM

Field Examiner

National Labor Relations Board

.....

Board Exhibit No. 2-A

209

January 24, 1945

L. A. Young Spring and Wire Corp.
Mr. J. L. Justice
3200 E. Slauson Ave.
Los Angeles, 11, Calif.

Dear Sir:

This is to inform the L. A. Young Spring and Wire Corporation, Plant Nine (9), that the Foremen have organized and are affiliated with the Foremen's Association of America. Membership of our Chapter being 100% of all foremen employed in the Los Angeles Plant.

The purpose of our organizing is to promote cooperation between the Company and the Foremen and to insure the welfare of each and every Foreman.

Operating under Charter Number 155 issued on January 5, 1945 we have elected our Chapter Officers and Executive Board.

The Foremen's Association of America is authorized to organize under the Wagner Act and under the same these Officers have been elected.

At this time we would like a cooperative meeting between the Manager, Mr. J. L. Justice, and the Executive Board to take place on January 25, 1945 at 2:00 P. M. The Executive Board consists of the following persons, Warren Logan President, Harold Fender, James Jackson, Boyd Cook James Glaister and Raymond Holland.

The cooperation of the Company at this time, we are sure, will promote friendly relations in the future.

Yours truly

WARREN B. LOGAN
President Chapter 155

WBL/ES

Board Exhibit No. 2-B

210 L. A. Young Spring and Wire Corporation
9200 Russell Street
Detroit 11, Michigan

Reply Attention of
C. M. Young

January 30, 1945

Mr. Warren B. Logan
c/o L. A. Young Spring & Wire Corp.
3200 E. Slauson Avenue
Los Angeles, California

Dear Sir:

Your letter of January 24, 1945, to the attention of Mr. J. L. Justice of our Los Angeles Plant has been referred to this office for consideration.

This corporation's present position, as is confirmed by the Soss Engineering Company and the Republic Steel Corporation cases, is that it will not discriminate against a foreman because of organizational activity, so long as such activity is not conducted in interference with his corporation work assignment.

However, as you may well realize, the entire situation regarding foremen's organizations is in a state of flux. The Packard Motor Company case before the National Labor Relations Board and the Chrysler and Continental, etc. cases before the National War Labor Board undoubtedly will shed considerable light on the rights of bargaining and the airing of disputes and grievances. This corporation certainly desires to learn the outcome of such cases before it establishes a policy toward foremen's unions, and hence at this time it must refuse to meet with your Executive Board.

We may add, nevertheless, that we shall as diligently as humanly possible continue to be aware of the matters affecting our foremen in the fulfilling of the responsibilities of their positions in our plants and we shall continue to

meet with any individual foreman on any matter that pertains to his position that he may care to discuss.

Very truly yours,

L. A. YOUNG SPRING & WIRE CORPORATION

C. M. Young

C. M. YOUNG

Vice President

CMY:ag

copy to:

Mr. J. L. Justice

L. A. Young Spring & Wire Corp.

3200 E. Slauson Ave.

Los Angeles, California

Board Exhibit No. 2-C

211

March 29, 1945

L. A. Young Spring & Wire Corp

3200 E. Slauson Avenue

Los Angeles, California

Attn: Mr. J. L. Justice

Dear Sir:

In the letter we received January 30, 1945 from Mr. C. M. Young we were informed that you could not meet with any person, or persons representing the Foremen for the purpose of Collective Bargaining until a decision had been handed down by the N.L.R.B. in Washington as you undoubtedly know.

A decision has been reached by the N.L.R.B. to the effect that Foremen do have the right to organize and be recognized for the purpose of Collective Bargaining.

As you have been informed by letter by us the Foremen of this plant (Plant #9) are organized 100% in the F.A.A. and we are asking for a meeting between you and the Executive board we have elected to represent us. If this meeting has not been held by April 4, 1945, we will be forced

to call in the N.L.R.B. for an election to determine our Bargaining agency.

Your immediate cooperation will be greatly appreciated.

Yours sincerely,

WARREN B. LOGAN

Pres. Chapter #155

WBL:ES

Board Exhibit No. 2-D

212 L. A. Young Spring and Wire Corporation
9200 Russell Street
Detroit 11, Michigan

Reply attention of
C. M. Young

April 2, 1945

Mr. Warren B. Logan
L. A. Young Spring & Wire Corporation
3200 E. Slauson Avenue
Los Angeles, California

Dear Mr. Logan:

Your letter of March 29th to the attention of J. L. Justice has been referred to this office for reply.

As you have pointed out in your letter, a decision has been handed down by the NRLB covering foremen in the Packard case. As you undoubtedly know, the Packard Company has the right to appeal this case to the Circuit Court of Appeals and even though it does not appeal it, the NRLB has to go to the Circuit Court of Appeals to get an order enforcing the decision. We are definitely informed that Packard intends either to appeal or to oppose such an order in the Circuit Court of Appeals. Therefore, the matter will not be finally determined until acted upon by the Circuit Court of Appeals. We, like the rest of Industry, will, of course, have to await the final decision in the matter and, therefore, can not at this time agree to bargain with your group as a Union, and we think you will agree that it would be unwise for you to proceed further in the matter until the case has been finally determined.

As we stated in our letter of January 30th, we have no quarrel with our foremen or with their right to organize as they deem proper for their best interests, but I am sure that you will appreciate that we can not agree to bargain with our foremen as a Union until the decisions in the Packard or other similar cases have been finally determined.

We are rather proud of the relations that we have established with our foremen in our Los Angeles plant and with the improvements we have voluntarily inaugurated in our relations with our foremen even before we had any knowledge of the organization of the foremen in the plant. I am sure you will recall that when Mr. Ely, who is now General Production Manager of all of our plants, took charge of the Los Angeles plant, that foremen's salaries and wages were increased and we have since established a plan of meetings between Mr. Justice and the supervisory staff where general plant problems and supervisory problems have been fully discussed and worked out. It is our understanding that Mr. Justice is following along the lines inaugurated by Mr. Ely.

213 You have our assurance that even though we cannot now deal with your Foremen's Union as requested by you, for the reasons mentioned above, that we have instructed Mr. Justice to discuss any problems that you, as foremen, have to raise with the hope that these problems can be satisfactorily settled.

As soon as the final decisions are reached in the Packard and other similar cases so that a plan is definitely determined, you can be sure that we will cooperate fully.

Very truly yours,

L. A. YOUNG SPRING & WIRE CORPORATION

C. M. YOUNG,
Vice President

CMY:ag

Petitioner Exhibit No. 1

215 CONSTITUTION OF THE FOREMAN'S ASSO-
CIATION OF AMERICA AND LAWS GOVERN-
ING CHAPTERS.

217 PREAMBLE

From the early days of mass production by power machinery to the present decade the foreman was considered either as the channel through which the desires of ownership and management were conveyed to and made effective among the body of workers, or as the representative of ownership and management in the shop. Just before the opening of the present decade the organization of the body of workers into plant and industry-wide unions demanding the exclusive right of representation for collective bargaining purposes, dealing with employers or groups of employers in organizations that have existed for years, has greatly changed the real status of the foreman.

In the particulars of the day's production the foreman is yet the channel for making effective policies and directions of management as applied to production, but he is a part of neither organized ownership and management on the one hand nor of organized labor on the other hand. The foreman fits between two enormous powers, ownership and management on top and labor unions with enormous numbers on the bottom. The foreman has reason to feel that in the ceaseless struggle between ownership and wage labor the foreman will become a victim unless all foremen are organized to protect individuals and interests common and essential to the position of foremen in modern mass power production.

219 ARTICLE I—NAME

This voluntary association of supervisory employees shall be known as Foremen's Association of America.

ARTICLE II—PURPOSES

The purposes of the Association shall be to encourage social acquaintances among supervisory employees, to confer and act upon measures for the protection and advancement of the economic welfare of supervisory employees through collective bargaining, and to encourage study, conference, and wider learning among supervisory employees to the end that they may improve in the supervision of men and women in industry.

ARTICLE III—CONSTITUTION

The Constitution shall be the Supreme Law of the Foreman's Association of America.

ARTICLE IV—AFFILIATION

The Foreman's Association of America shall not become a subordinate affiliate of any labor organization, and shall not become an affiliate of any manufacturers' association.

ARTICLE V—HEADQUARTERS

220 The headquarters of the Association shall be located in the Metropolitan District of Detroit in the State of Michigan.

ARTICLE VI—MEMBERSHIP

* * * * * * * *

Section 2. Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association after having been employed as a supervisory employee for a period of not less than thirty (30) days prior to the filing of application for membership, and provided that such application to a Chapter of the Association is accompanied by a membership fee.

Section 3. No supervisory employee or individual acting as negotiator in formulating employer-policy may become a member of the Foreman's Association of America.

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251 **ARTICLE XXV—LAWS GOVERNING CHAPTERS
AND REGIONAL ORGANIZATIONS**

• • • • •

252 Section 3. Each Subordinate Body may maintain free relations with other organizations, but shall affiliate with no labor organization other than the Foreman's Association of America.

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Petitioner Exhibit No. 2

264

Jan. 23, 1945

**PERSONNEL DEPARTMENT PROCEDURE
PLANT #9**

J. Albertson
W. Andrade
J. Arnone
E. Broeske
B. Cook
G. Cosper
W. H. Fisher
D. Campbell
R. Crittenden
G. Croskery
J. Davidson
A. Dingwall
E. Durbin
C. Eoff
R. Evans
H. Fender
J. Figeria
L. Ford
L. Foss
A. J. Garroway
R. Holland

C. Holmes
G. Hood
C. Horner
J. Jackson
F. Kaltenberger
J. Langston
W. Logan
E. Manley
W. Martindale
P. Minning
M. Pulvino
W. Purceil
R. Reiss
H. Schuetz
E. Schwartz
N. Smurro
F. Stephenson
C. White
Time Office
File

EMPLOYMENT

1. Interview:

A. Check Availability Certificate. Question the applicant thoroughly as to his past experience on all former jobs. Try to place him where he is best fitted.

B. Check application and see that all questions are answered and that application is legible.

2. Physical Examination:

Send applicant to Dr. Spear for examination and health records. (All applicants go to doctor alone whose office is only one and one-half blocks away). His record is brought back to the Personnel Office in a sealed envelope, check and if OK, can proceed.

3. U. S. Employment Service Clearance:

Applicant is then ready to clear through United States Employment Service for Referral Card.

4. Hiring:

A. The applicant is now ready to fill out our Selective Service Questionnaire, U. S. Citizenship Questionnaire, W-4 Withholding Tax Form and Authorization for War Bond Payroll Deduction.

B. Form 1217 is made, copies going to employee, Time and Payroll Department. Original is filed in Personnel Office. Badge is assigned and first clock card made.

C. Plan of Prudential Group Insurance offering life, sickness and accident, employee and dependent hospitalization, surgical benefits, etc., is explained; maximum benefits and limitations being pointed out. Employee enrolls or waives his rights in the plan, as he chooses, and copy sent to Payroll Department. If he enrolls, policies are made up and issued at a later date.

265 5. TRANSPORTATION:

New Employees:

Employee is questioned as to plan for getting to and from work. If public transportation is inadequate, request for ride is made. If ride is not available, employee is given OPA Form R-535 for Supplemental Mileage Rations. He executes this form and leaves it with the Transportation Committee Secretary for certification. Being certified for correct mileage, the request is sent to the Ration Board for approval and issuance of rations.

6. The employee is then taken to his department and introduced to his foreman.

7. A. Renewals of employee supplemental rations are certified every three months. In cases where it is not possible for driver to carry riders due to irregular hours, absence of employees in vicinity or enroute or any other unusual circumstances, a verified letter confirming the situation must be written and sent along with renewal to Ration Board.

B. Delays of more than fourteen days in receipt of employee rations must be verified with ration boards by telephone or correspondence.

8. TRANSFERS:

Departmental transfers are signed by the Chief Steward, one Committeeman and the Foremen of the two departments involved. Form 1217 is made, signed by Martindale, Horner and Justice and then sent to Time and Payroll Departments with Personnel filing the original. Departmental seniority is then changed to the seniority board.

9. SENIORITY:

The departmental seniority lists and plant seniority list must be kept up-to-date. Personnel furnishes both foreman and committee with any information they wish regarding seniority.

10. LEAVES OF ABSENCE:

The request for leave is furnished by Personnel. After employee has secured the signature of his Foreman and Steward, the Personnel Manager reviews the conditions and grants or refuses the leave of absence.

266 11. GROUP INSURANCE:

A. Monthly insurance reports of all types of current coverage must be prepared showing any change occurring since date of last premium payment.

B. Monthly reports of claims paid must be prepared as follows:

Group Sickness and Accident claims

Hospitalization Claims

Surgical Benefits

Check register of all claims paid by Plant #9 on Prudential Draft.

C. Sickness and Accident Claims

When employee is unoccupationally disabled, he notifies the Personnel Department within three days and is sent the "Notification of Disability Card", Form ORD 14138 which he completes and returns. Claim form is mailed, completed by employee and attending physician and returned. Eligibility of claim is determined and paid on nearest bi-monthly claim date. In cases of questionable disability, claimant is sent to Dr. C. S. J. Tillmans, and after final payment is made, claim is filed permanently.

Hospitalization Claims

Employee notifies Personnel Department of his or dependents hospitalization and receives claim form to be executed by self, hospital and physician, and returns it to Personnel Department for determination of eligibility and recommendation for payment. If payment is to be made directly to hospital, employee authorizes this by signing authorization. Accounting Department verifies recommendation for payment and draws draft which is returned to Personnel for disbursement. Claim is then forwarded with authorization form, where used, to Newark for allowable surgical benefits.

12. MISCELLANEOUS PROCEDURES:

Office of Price Administration

A. Distribute OPA Forms for Special Mileage Rations, Special Safety Shoe Stamps and Automobile Tires, certifying same after being properly executed by employee.

B. Apply for and renew all company gasoline rations for trucks, automobiles, air-compressors and jeep. Account for and release all gas coupons on 1942 Company Pontiac.

267 13. SELECTIVE SERVICE:

Submit D.S.S. Forms 42-A and 42-B on employees. Make appeals when necessary.

14. FILES:

A. This office is setting up three units of individual folders:

Active

Inactive

Leaves of Absence

B. All Personnel material starting with the original application through employee's terminations will be kept in one folder, the exception to this being the Form 1217 which is kept in individual envelopes; Form 1265 and filed in badge order.

15. ABSENTEE REPORT:

A. Make investigating calls on absentees who have not satisfactorily explained their absence or verified same.

B. A Daily Working Force Report for each department showing number of employees on each shift and percentage of absenteeism, is made up by Personnel, copies going to the following:

Mr. J. L. Justice

Mr. Cyrus Horner

C. RECAP:

Mr. C. M. Hollis
Mr. H. J. Eckerson
Mr. F. G. Ferdon

* * * * *

CASE NO. 21-C-2716

Board Exhibit No. 3-A

367

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 21-R-2816

In the Matter of

L. A. YOUNG SPRING & WIRE CORPORATION
and

FOREMAN'S ASSOCIATION OF AMERICA,
CHAPTER No. 155

Cook, Smith, Jacobs & Beake by Mr. Grant L. Cook, of Detroit, Mich., and Mr. Abram Robert Simon, of Beverly Hills, Calif., for the Company.

Mr. J. B. Tietz, of Los Angeles, Calif., and Mr. Warren B. Logan, of South Gate, Calif., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION AND DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Foreman's Association of America, Chapter No. 155, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of L. A. Young Spring & Wire Corporation, Los Angeles, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles M. Ryan, Trial Examiner. The hearing was held at Los Angeles, California, on May 7 and 8, 1945. The Company and the Union appeared and participated. All parties were

afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board. Oral argument before the Board in Washington, D. C., was heard on September 11, 1945. At the hearing, the Company moved to dismiss the petition for lack of jurisdiction. The Trial Examiner referred this motion to the Board. For reasons stated hereinafter, the motion is hereby denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

L. A. Young Spring & Wire Corporation, a Michigan corporation, operates in Los Angeles, California, a branch factory which is the subject of this proceeding. In 368 normal times the Los Angeles plant manufactured automobile cushion springs; during the war years it fabricated and assembled war materials. For use in its manufacturing operations at the Los Angeles plant during the war period, the Company purchased approximately 1,000 tons of steel per annum valued at about \$450,000, of which in excess of 75 percent represented purchases outside the State of California. During the same period, the Company annually sold products from this plant valued at approximately \$2,351,000, of which more than 75 percent represented sales to local aircraft manufacturing companies engaged in interstate commerce.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Foreman's Association of America, Chapter No. 155, unaffiliated, is a labor organization admitting to membership supervisory employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has declined to accede to the Union's request for recognition as the collective bargaining representative of the Company's foremen and assistant foremen on the ground that the bargaining rights of foremen under the Act have not been judicially determined.

In support of its motion to dismiss the petition, the Company contends that the foremen and assistant foremen are not "employees" within the meaning of Section 2 (3) of the Act. The Company has set forth no argument in justification of its contention which was not fully considered by us in the recent *Packard*¹ and *Soss*² cases wherein we held that foremen are "employees." We find, in accord with our determinations in those cases, that the Company's foremen and assistant foremen are "employees" within the meaning of Section 2(3) of the Act.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents all employees in the unit hereinafter found appropriate.⁴

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union seeks a unit of foremen and assistant foremen in the production and maintenance division of the Company's Los Angeles plant. The Company asserts (1) that the proposed unit is inappropriate, and (2) that the Union

¹ Matter of Packard Motor Car Company, 61 N. L. R. B. 4 and 64 N. L. R. B., No. 204.

² Matter of Soss Manufacturing Company, 56 N. L. R. B. 348.

³ See N. L. R. B. v. Armour and Co. (C. C. A. 10, Nov. 5, 1945) 17 L. R. R. 372; Jones & Laughlin Steel Corporation v. N. L. R. B., 146 F. (2d) 833 (C. C. A. 5); N. L. R. B. v. Skinner & Kennedy Stationery Company, 113 F. (2d) 667 (C. C. A. 8).

⁴ The Field Examiner reported that the Union submitted 22 application for membership cards; that there are the same number of employees in the appropriate unit; and that the names on all the cards appeared on the Company's pay roll of May 7, 1945.

is not independent of the labor organization which represents rank and file employees.

369 The majority of the Board found in the *Packard* case that a unit of foremen represented by the Foreman's Association of America was appropriate. The Company, however, contends in its initial objection that the *Packard* decision is not controlling in the present case. It argues that, in the cited case, the Board first reaffirmed the principle enunciated in the *Maryland Drydock* case,⁵ to wit, that the duty to define the appropriate unit vests in the Board administrative discretion to determine whether any given group of "employees" shall have collective bargaining rights under the Act, and then, in the exercise of that discretion, decided that a unit of foremen in mass production industries was appropriate in view of the decline in the authority and responsibility of such foremen over the years to the point where they have become merely the "traffic cops" of industry. The Company further argues that, in tracing and emphasizing the alteration in the status of foremen in mass production industries since the early 1900's, the Board necessarily implied that, if the foremen in the *Packard* case had retained the duties, status, authority and responsibility of their predecessors of the early 1900's, it would have found a unit of such foremen inappropriate. In keeping with this analysis, the Company has undertaken to prove that the foremen here involved differ in their status, duties, responsibilities and privileges from those in the *Packard* case and that the former are more akin to the foremen of the early 1900's than to foremen "traffic cops."

The plant involved herein is small, employing about 275 persons, of whom 26 comprise the supervisory staff. In descending order of importance the latter group includes the following: 1 general manager, 1 factory manager, 1 day superintendent, 1 night superintendent, 20 foremen, and 2 assistant foremen.⁶ Five of the foremen and both assistant

⁵ Matter of The Maryland Drydock Company, 49 N. L. R. B. 733.

⁶ The figures given are for the period of the hearing.

foremen are hourly paid, all the other supervisors are salaried. Insofar as powers and duties are concerned, the Company makes no distinction between its salaried and hourly paid foremen.

Each foreman is in complete charge of the operations of a department; his duties are entirely supervisory in nature.⁷ He has the power to discharge probationary employees in his department outright, to discipline or discharge regular subordinates subject to the provision of the collective bargaining contract covering rank and file workers,⁸ and to promote employees to better jobs within his department. The foreman regularly rates his subordinates on forms which are sent to the personnel department, and represents the Company in the initial stages of the grievance procedure affecting these employees. In addition, he attends weekly foremen's meetings at which production problems are discussed,⁹ participates in monthly safety forums, is responsible for safety procedures in his department, initiates time studies on new operations, and is consulted before production standards are finally set.

The foreman's authority, although extensive in these many respects, is circumscribed in others. Thus, he enforces but does not formulate Company rules; he has no power to sanction overtime by his subordinates without written permission from the superintendent; and he does no hiring.

370 It is undoubtedly true, as the Company contends, and the composite picture of the evidence reveals, that the foremen here involved have greater discretion, authority and responsibility than the foremen who were the subject of the proceeding in the *Packard* case. However,

⁷ Assistant foremen are aids to foremen; like the foremen their duties are exclusively supervisory.

⁸ International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, represents the production and maintenance employees; it is hereinafter referred to as the UAW.

⁹ These meetings were instituted after the Union had made its initial demand for recognition. As to the effectiveness of the meetings, a foreman testified that more production problems are solved on the plant floor as they arise than in these meetings.

we do not believe that the application of the Act to foremen can or arbitrarily should be made to depend upon the type of industry involved, whether mass production or non-mass production, or upon the variation in the duties and responsibilities of foremen from company to company. The majority opinion in the first *Packard* case (decided March 26, 1945) did not decide otherwise; the question was necessarily reserved. In that case, the Board was confronted with the single question of whether foremen in mass production industries who function primarily as industrial "traffic cops" are employees and may constitute an appropriate bargaining unit. In giving an affirmative answer to this question, the majority did not decide or intend to imply that foremen in non-mass production industries or foremen whose duties and responsibilities make them more than industrial "traffic cops," are not "employees" or may not comprise an appropriate unit. That issue is now before the Board for the first time since the *Packard* case and, in view of the importance of the problem and the apparent misunderstanding of the scope of the majority's decision therein, we have reexamined the reasoning of that decision against the broader legal and social background. We have already found that the foremen employed by this Company are employees within the meaning of the Act.

The right of employees to self-organization and to collective bargaining through representatives of their own choosing is a "fundamental" one which antedates and exists apart from the statute;¹⁰ its beneficiaries are supervisory as well as non-supervisory employees.¹¹ Through the instru-

¹⁰ *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Amalgamated Utility Workers v. Consolidated Edison Co. of New York Inc.*, 309 U. S. 261.

¹¹ *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4; *Matter of Soss Manufacturing Company*, 56 N. L. R. B. 348.

Supervisory personnel have been members of unions and have been covered by collective bargaining contracts in a number of industries. For example, supervisory groups have long been organized in separate unions in the maritime industry, in parts of the railroad industry, and in the Postal Service. Foremen have been included under collective bargaining contracts covering production workers in the printing and building trades, in the metal trades insofar as they operate on a craft basis, in many of the railroad trades, and to a greater or less extent, among teamsters, longshoremen and others. See *Union Membership and Collective Bargaining by Foremen*, U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 745 (1943).

mentality of the National Labor Relations Act, Congress reaffirmed that right, erecting safeguards for employees in their self-organizational activities and encouraging the practice and procedure of collective bargaining as "fundamental to the friendly adjustment of industrial disputes." By way of safeguard, Congress has rendered illegal various acts of employer interference, coercion and discrimination which place restraints upon employee self-organization. Specifically to encourage the practice of collective bargaining, Congress has made it illegal for an employer "to refuse to bargain collectively with the representatives of his employees." Congress has also provided machinery for the peaceful adjudication of the often perplexing and controversial representation questions. Section 9(c) of the Act provides: "Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected." Section 9(b) entrusts to the Board the task of deciding in each case "whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." The entire Act, as well in its substantive provisions as in its statement of policy, clearly evinces Congress' conviction that labor disputes should be settled by peaceful means and that collective bargaining by equals is the best way of achieving this objective.¹² Accordingly, any interpretation of the Act which would render it inapplicable to an important segment of the working population should be avoided unless specifically ordained.

¹² In *N. L. R. B. v. Armour and Co.* (C. C. A. 10, Nov. 5, 1945), 17 L. R. R. 472, the Court stated: "The purpose of the Act is to promote fair and just settlement of disputes by peaceful processes and to prevent industrial warfare with its harmful repercussions upon employer and employee and the general public."

The Board has, in the *Maryland Drydock* and following cases, construed Section 9 (b) as conferring upon it administrative discretion, not only to determine which of several units is appropriate "in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act," but also to decide that some "employees" may not constitute an appropriate unit in any circumstance. We are now persuaded that this interpretation is unjustified and should not govern future Board rulings.¹³

Congress has specifically listed for exclusion from the operation of the Act only three classes of workers: agricultural, domestic and family. It is urged, however, that under the authority to define the appropriate unit contained in Section 9(b), the Board has, in effect, the power to add to this list of Congressional exclusions. Section 9 (b) does not, in our opinion, lend itself to such an interpretation. The language of this section is language not of exclusion but of classification. We are to choose between alternatives: whether the appropriate unit for collective bargaining purposes shall be the "employer unit, craft unit, plant unit or subdivision thereof." The function of deciding the appropriate unit is a positive one. "It is not a negative concept to be used as a means of denying all bargaining rights under the Act to a given group of employees in all circumstances."¹⁴ Once the Board determines that certain individuals are "employees" within the meaning of the Act, its sole remaining duty under Section 9 (b) is to group these "employees" in that unit which will insure to them "the full benefit of their right to self-organization and to collective bargaining," and otherwise effectuate the policies of the Act." Under the power to define the unit, the Board may properly insist that foremen be organized in bargaining units apart from their subordinates, but it can-

¹³ See the concurring opinion of the Chairman in the second Packard case, 64 N. L. R. B., No. 204.

¹⁴ *Matter of Bee Line, Inc.*, 6 N. Y. S. L. R. B. 686, 695, construing similar language in the New York State Labor Relations Act.

not ostracize them.¹⁵ In this view, the kind of industry in which foremen are employed is immaterial and the duties and responsibilities of foremen are relevant only insofar as they bear on the question of proper grouping for collective bargaining purposes.¹⁶ These factors may become important in fixing the terms of any ultimate bargain, but they cannot be a criterion in determining whether this Board's facilities should be made available to foremen.

The soundness of this construction of the Board's powers and responsibility is emphasized by considerations of public policy, which favor the settlement of labor disputes by peaceful means rather than by strife. It is
372 patent that a considerable number of foremen are dissatisfied with the terms and conditions of their employment and believe that they can achieve more satisfactory standards by collective in preference to individual action. It is not the Board's function to decide whether the grievances of foremen are justified or whether unionization affords the proper remedy. It is sufficient that foremen have organized themselves into unions as they have a legal right to do and have petitioned this Board to make the regular procedures of the Act available to them. The Company, however, would have the Board deny their foremen access to these procedures allegedly because unionization of foremen would have a number of socially harmful results, particularly as respects the ability of management to continue to operate effectively.¹⁷ Acknowl-

¹⁵ The position here adopted as to the meaning of Section 9 (b) was substantially that accepted by the Board prior to the Maryland Drydock case. See *Matter of The Maryland Drydock Company*, 49 N. L. R. B. 733; *Matter of Godchaux Sugars, Inc.*, 44 N. L. R. B. 874; *Matter of Union Collieries Coal Company*, 41 N. L. R. B. 963 and 44 N. L. R. B. 165; *Matter of Harmony Short Line Transportation*, 42 N. L. R. B. 757.

¹⁶ To the extent that they are inconsistent with this paragraph, the Maryland Drydock decision and following cases are hereby overruled.

¹⁷ In this connection, the Company is seriously disturbed by the fear that if foremen are unionized, a new loyalty to the union will be created which will supersede and ultimately destroy the foremen's loyalty to their employer, making the continued successful operation of its business impossible. A foreman's loyalty to his union, particularly to an independent supervisors' union, need not come into conflict, except in a very narrow compass, with the duty owed to his employer. Manifestly, the unionized, as well as the non-unionized foreman has at least a selfish interest in the success of the business from which he draws his livelihood and this interest is likely to have a powerful restrain-

edging the good faith with which the Company states its position, the fact remains that the argument in favor of dismissing the petition would have weight only if by so doing the Board could also forbid foremen to unionize. But foremen, being men, have a natural right to associate with one another. Dismissal of the petition would therefore emphasize to these foremen that only by a mobilization of their economic strength and by resort to industrial war with its attendant ills may they secure recognition of that right. Any policy of dismissing foremen's petitions, as advocated by the Company, would thus be a policy of negation, settling none of the problems created by foremen's unionization and further increasing labor strife. It seems wiser to conduct an election to determine the preliminary question of whether an employer's foremen have selected an independent union, as is customary under the peaceful and democratic procedures provided by the Act. Ultimately, only the parties themselves can achieve a satisfactory accommodation of their differences.¹⁸ The

ing influence upon any displays of union loyalty which might adversely affect his employer. Possible areas of conflict can be anticipated and provided for by collective bargaining.

¹⁸ Perhaps the experience of the printing industry, where collective bargaining for foremen, who are members of the same union as their subordinates, has been accepted practice for more than 50 years will serve to reassure the Company. A recent survey notes:

"In early years, many publishers were strongly opposed to having their representatives owe allegiance to the union. As contracts became more inclusive, however, and rights of both employers and unions more clearly defined, publishers in general ceased to object to the foreman law. They are now chiefly concerned lest foremen should be subject to union discipline for differing with the local union in the interpretation of the terms of a contract. The internationals generally recognize the justice of the publishers' position and a method is provided for the joint settlement of such disputes. The unions do not, however, forego their right to discipline foremen for disobeying laws relating to internal union matters, or for deliberately disregarding union rules. Although there is still occasional complaint that some locals attempt, by disciplining foremen, to enforce conditions not provided for in contracts, the practice is not so common as to constitute a major issue.

The foreman represents the employer in dealing with grievances arising in his department. He settles many day-to-day grievances and complaints with the chapel chairman, without recourse to the joint standing committee or to arbitration."

"In book and job printing the union membership of foremen is so thoroughly established that it does not become an issue except occasionally in a newly organized plant. It is clearly recognized that the foreman's first responsibility is to management. His duty to the union is to administer the agreement fairly in the plant . . ." *How Collective Bargaining Works*, New York, Twentieth Century Fund, (1942) pp. 67, 68, 147.

373 solution will be easier, however, and more firmly rooted, if it is reached in an atmosphere unpoisoned by the suspicions and bitterness which are so often the aftermath of industrial strife caused by denial of mere recognition.

The second contention made by the Company, in support of its motion to dismiss the petition, is that the Union is not independent of the UAW, the labor organization which represents the rank and file employees. The Union is a local of the petitioner in the Packard case, concerning which the same charge of lack of independence of the UAW was made. The majority of the Board there held that the company had failed to prove its allegation and concluded that the Foreman's Association of America "is an unaffiliated and independent labor organization, organized for the exclusive purpose of representing supervisory employees." The evidence offered in the instant proceeding to prove the Union's alleged lack of independence is similar to and no more persuasive than that adduced in the Packard case. The Company relies on the following to establish the Union's lack of independence of the UAW: (a) an article in the local UAW newspaper welcoming the Union to the plant; (b) an admission by the Union's president that he had talked with some of the UAW leaders before filing the petition; (c) an admission by the Union's president on cross-examination, in reply to a hypothetical question, that he would not, as a foreman, attempt to fill the jobs of any UAW members who went out on strike. Unquestionably sympathy exists between the UAW and the Union. But this natural sympathy of one union for another is insufficient to establish a partnership relation between them. The Union, like its parent, is organically a free and independent labor organization which limits its membership to supervisory employees. There is not the slightest evidence to show that, despite this sympathy for the UAW, the local Union is not free to formulate its own policy, to decide its own course of action, and to make its own collective bar-

gaining contracts, subject only to the constitution of the national foreman's union. No other labor organization, so far as appears from the record, can dictate, override, or limit the decisions of the Union. Accordingly, we find that the Union is an independent, unaffiliated labor organization, organized for the exclusive purpose of representing supervisory employees.¹⁹

The Company does not object to the composition of the unit proposed by the Union. We find, therefore, that all foremen and assistant foremen in the production and maintenance division of the Company's Los Angeles plant, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

374 V. THE DETERMINATION OF REPRESENTATIVES.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with L. A. Young Spring & Wire Corporation, Los Angeles, California, an election by secret ballot shall be conducted

¹⁹ We are concerned with an unaffiliated labor organization which admits only supervisory employees into membership. The question of the effect of affiliation as such is not before the Board, and we need not and do not pass upon it in this case.

as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election to determine whether or not they desire to be represented by [Foreman's Association of America, Chapter No. 155,] for the purposes of collective bargaining.

Signed at Washington, D. C., this 8 day of January 1946.

PAUL M. HERZOG

Chairman

JOHN M. HOUSTON

Member

NATIONAL LABOR RELATIONS BOARD

(Seal)

374A GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinions in Matter of Packard Motor Car Company,¹ I am constrained to disagree with the majority opinion. The record here indicates that the foremen are vested with even greater management functions than was the case at the Packard plant.

¹ Matter of Packard Motor Car Company, 61 N. L. R. B. 4; 64 N. L. R. B., No. 204.

Signed at Washington, D. C., this 8th day of January 1946.

GERARD D. REILLY
Member

NATIONAL LABOR RELATIONS BOARD

Board Exhibit No. 3-B

375

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 21-R-2816.

In the Matter of
L. A. YOUNG SPRING & WIRE CORPORATION
and

FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER No. 155.

CERTIFICATION OF REPRESENTATIVES.

On February 1, 1946, an election was conducted in the above matter pursuant to the Board's direction of January 8, 1946 (65 N. L. R. B., No. 59), and in accordance with the Rules and Regulations of the Board. It appears from the Tally of Ballots that a collective bargaining representative has been selected, since of the approximately 17 eligible voters, 17 cast valid votes, all of which were for the Union. No objections have been filed by any of the parties within the time provided therefor.

By virtue of and pursuant to the power vested in the Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of the Board's Rules and Regulations—Series 3, as amended.

It Is Hereby Certified that Foreman's Association of America, Chapter No. 155, has been designated selected and by a majority of all foremen and assistant foremen in the production and maintenance division of the Los Angeles, California, plant of the L. A. Young Spring & Wire Corporation, as their representative for the purposes of collective

bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Dated, Washington, D. C., this 13 day of February 1946.

By direction of the Board:

JOHN E. LAWYER
Chief, Order Section

(Seal)

P

Copy

* * * * *

Board Exhibit No. 1-B

348

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

Case No. XXI-C-2716

In the Matter of

L. A. YOUNG SPRING & WIRE CORPORATION

and

FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER No. 155

COMPLAINT

It having been charged by Foreman's Association of America, Chapter No. 155, hereinafter called "Union," chartered by Foreman's Association of America, an unaffiliated labor organization, that L. A. Young Spring & Wire Corporation, hereinafter called "Respondent," has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Re-

gional Director for its Twenty-first Region, designated as its agent by Article IV, Section 1, subsection (c) and Article II, Section 5, of its Rules and Regulations, Series 3, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation organized under and existing by virtue of the laws of the State of Michigan. Respondent has its principal office and place of business at Detroit, Michigan. Respondent operates a branch plant at 3200 East Slauson Avenue, Los Angeles, California, where it manufactures and sells spring wire products.

2. Respondent, in the course and conduct of its business at the aforesaid Los Angeles plant, causes and continuously has caused substantial quantities of raw materials, consisting chiefly of steel, to be transported into the State of California from other states of the United States and from foreign countries.

3. Respondent, in the course and conduct of its business at the aforesaid Los Angeles plant, causes and continuously has caused substantial quantities of spring wire products consisting chiefly of automotive, bedding, and furniture springs, to be transported out of the State of California to other states of the United States and to foreign countries.

4. The Union is a labor organization within the meaning of Section 2, subsection (5) of the Act.

5. All foremen and assistant foremen in the production and maintenance division of Respondent's aforesaid Los Angeles plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

6. On or about February 1, 1946, a majority of Respondent's employees within the unit set out in Paragraph 5 selected the Union as their representative for the purposes of collective bargaining. By virtue of Section 9 (a) of the Act the Union has been since on or about February 1, 1946, the exclusive representative of all of such employees for the purposes of collective bargaining.

7. Since on or about March 5, 1946, Respondent, while engaged in the operation of its aforesaid Los Angeles plant, through its officers, executives, agents, and representatives, continuously has refused and failed, and does now refuse and fail to bargain collectively with the Union.

8. By this continuous refusal and failure to bargain with the Union as set out in Paragraph 7, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

350 9. By the course of conduct set out in Paragraph 7, Respondent has interfered with, restrained, and coerced its employees in the exercise of the right, guaranteed to them in Section 7 of the Act, of bargaining collectively with Respondent through representatives of their own choosing. Respondent thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

10. Respondent's course of conduct set out in Paragraph 7, occurring in connection with the operation of its business as described in Paragraphs 1, 2, and 3, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and between such states and foreign countries, and tends to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

11. Respondent's course of conduct set out in Paragraph 7 constitutes unfair labor practices within the meaning of Section 8, subsections (1) and (5), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on this 15th day of April, 1946, issues its Complaint against L. A. Young Spring and Wire Corporation, Respondent herein.

Stewart Meacham,
STEWART MEACHAM,
Regional Director
Twenty-first Region

NATIONAL LABOR RELATIONS BOARD

* * * * *

Board Exhibit No. 1

359

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. XXI-C-2716

In the Matter of

L. A. YOUNG SPRING & WIRE CORPORATION

and

FOREMEN'S ASSOCIATION OF AMERICA, CHAPTER No. 155

ANSWER

Respondent L. A. Young Spring & Wire Corporation, whose post office address is 9200 Russell Street, Detroit 11, Michigan, without waiving and expressly reserving the right to at all times contest the jurisdiction of the National Labor Relations Board with respect to the matters set forth in the complaint filed herein, answers the complaint filed herein as follows:

1. With respect to the allegations set forth in Paragraphs 1, 2, and 7 of said complaint, respondent admits the same. With respect to the allegations set forth in Paragraph 6 of said complaint, respondent admits only that on or about February 1, 1946, a majority of the foremen and assistant foremen referred to in said complaint selected the union as their representative for collective bargaining, and respondent denies the remainder of the allegations set forth in said paragraph.

2. With respect to the allegations set forth in Paragraphs 3, 4, 5, 8, 9, 10 and 11, respondent denies each and every allegation set forth in each and every one of said subdivisions.

The respondent, further answering the complaint, alleges:

3. That the foremen and assistant foremen referred to in said complaint are not employees within the meaning of

the National Labor Relations Act and particularly within the meaning of Sections 2(3), 8(1), 8(5), 9(a), and 9(b) of the Act.

360 4. That the foremen and assistant foremen referred to in said complaint are employers within the meaning of the National Labor Relations Act and particularly within the meaning of Sections 2(2), 2(3), and 8(5) of the Act.

5. That the foremen and assistant foremen referred to in said complaint do not constitute a unit appropriate for the purposes of collective bargaining within the meaning of the National Labor Relations Act and particularly within the meaning of Sections 9(a) and 9(b) of the Act.

6. That certification of the union referred to in the complaint as the representative of the foremen and assistant foremen referred to in said complaint does not insure to employees the full benefit of their right to self-organization and to collective bargaining, or otherwise effectuate the purposes of the Act, within the meaning of the National Labor Relations Act and particularly within the meaning of Section 9(b) of the Act.

7. That the union referred to in said complaint is not a labor organization within the meaning of the National Labor Relations Act and particularly within the meaning of Section 2(5) of the Act.

Wherefore, Respondent respectfully prays that the complaint herein be dismissed.

L. A. YOUNG SPRING & WIRE CORPORATION

By C. M. YOUNG

Its Vice President

STATE OF MICHIGAN

County of Wayne, ss

C. M. Young, being first duly sworn on oath, says that he is vice president and a managing officer of the
361 respondent, L. A. Young Spring & Wire Corporation,

and makes this affidavit on its behalf, being authorized to do so; that he has read the above and foregoing Answer and knows the contents thereof, and that the same is true.

C. M. YOUNG

Subscribed and sworn to before me this 26th day of April A. D. 1946.

ELRA M. LONG

*Notary Public, County of
Wayne, State of Michigan*

(Seal)

My commission expires: Sept. 27, 1947.

* * * * *

Board Exhibit No. 2

363

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-First Region

Case No. 21-C-2716

In the Matter of

L. A. YOUNG SPRING & WIRE CORPORATION

and

FOREMEN'S ASSOCIATION OF AMERICA, CHAPTER No. 155

STIPULATION

It is Hereby Stipulated and Agreed by and between L. A. Young Spring & Wire Corporation, hereinafter called Respondent, through its undersigned general counsel, and James A. Cobey, Attorney, National Labor Relations Board, that:

1. Respondent, under the name of L. A. Young Industries, Inc., was incorporated under the laws of the State of Michigan on March 27, 1918. In March of 1928, Respondent adopted the name used in the above caption. Respondent's general offices are located at Detroit, Michigan.

2. Respondent is engaged in the business of manufacturing and selling upholstery, mattress, bed, and mechanical springs and miscellaneous wire products. Respondent is the world's largest manufacturer of spring wire products, and normally supplies about forty percent (40%) of the springs used by the automotive industry.

3. Respondent in the conduct of the afore-described business operates manufacturing plants at Detroit, Michigan; Toronto and Windsor, Ontario, Canada; Chicago and Joliet, Illinois; Trenton and Clifton, New Jersey; Memphis, Tennessee; Birmingham and Leeds, Alabama; and Los Angeles and Oakland, California.

364 4. Since May 18, 1928, Respondent has been qualified to do business within the State of California. It has operated its aforementioned Los Angeles plant since March 1936. This plant is the only one of Respondent's plants involved in the proceeding.

5. Since March 1936, Respondent's aforesaid Los Angeles plant has been located at 3200 East Slauson and is within the City of Los Angeles. Presently the Los Angeles plant is engaged in the manufacture and sale of automobile cushion spring constructions, inner-spring mattress units, cushion pad supports, plastic parts, and miscellaneous aircraft parts.

6. From October 1, 1945 to March 31, 1946, Respondent purchased for use in operating its Los Angeles plant, raw materials, consisting chiefly of wire and steel, exceeding two hundred eighty seven (287) short tons in amount, and Twenty Five Thousand Dollars (\$25,000) in value. Of these purchases, approximately ten percent (10%) in volume and ten percent (10%) in dollar value were brought into the State of California from other states of the United States and from foreign countries.

7. From October 1, 1945 to March 31, 1946, Respondent's sales of products manufactured at its Los Angeles plant were in excess of two hundred fifty (250) short tons in amount, and One Hundred Forty Eight Thousand Sixty

Five Dollars and ninety cents (\$148,065.90) in value. Of these sales approximately zero percent in volume and zero percent in dollar value were shipped from the Los Angeles plant to points located outside the State of California. Further, the following principal customers within the State of California: Ford Motor Company, General Motors Corporation, C. B. Van Vorst & Company, National Automotive Fibres Co., Modern Plastics Company, Lockheed Aircraft Corporation, North American Aviation, Inc., accounted for ninety-nine percent (99%) in volume, and ninety-nine percent (99%) in dollar value of these sales.

8. The parties to this Stipulation shall not be precluded by reason of it from introducing additional evidence relating to the matters herein stipulated, provided such additional evidence is not contradictory of the facts herein stipulated.

L. A. YOUNG SPRING & WIRE CORPORATION

By GRANT L. COOK,
General Counsel

JAMES A. COBEY,
Attorney

NATIONAL LABOR RELATIONS BOARD

Dated at Los Angeles, California this 15 day of May,
A. D. 1946.

* * * * *

Board Exhibit No. 4

376 FOREMAN'S ASSOCIATION OF AMERICA

CHAPTER #155

LOS ANGELES, CALIF.

February 27, 1946

Mr. J. L. Justice, General Manager,
L. A. Young Spring & Wire Corp.,
Los Angeles, Calif.

Dear Sir:

In re; Case #21-R-2816 before the National Labor Relations Board, we wish to call your attention to the Certification of Representation of Feb. 13, 1946.

Under this legal certification we are asking for a meeting between Management and the Executive Board of Chapter #155 of the Foreman's Association of America for the purpose of collective bargaining. This meeting to be held at your earliest possible convenience, not later than March 7, 1946.

Your cooperation in the foregoing will be greatly appreciated and we are sure that we will accomplish arrangements amicable to our respective responsibilities.

Respectfully yours,

WARREN B. LOGAN
President

JAMES A. JACKSON
RAYMOND R. HOLLAND
JOSEPH ARNONE
E. F. MANLEY
L. FOSS
Executive Board

* * * * *

Board Exhibit No. 5

377 **L. A. YOUNG SPRING AND WIRE
CORPORATION**

9200 Russell Street
Detroit 11, Michigan

Reply Attention of C. M. Young

March 5, 1946

Foreman's Association of America, Chapter No. 135
c/o L. A. Young Spring & Wire Corporation
3200 E. Slauson Avenue
Los Angeles, California

Attention: Mr. Warren B. Logan

Gentlemen:

We acknowledge receipt of your letter of February 27, 1946, in re Case No. 21-R-2816 before the National Labor Relations Board.

We, of course, have received the Certificate of Representation of February 13, 1946.

Since we are not in accord with the decision of the National Labor Relations Board in the above-mentioned case and since, as you know, the Packard case is now pending on appeal in the Circuit Court of Appeals for the Sixth Circuit and it is expected the matter may be argued before that Court in April or not later than June of this year, we are unwilling at this time to meet with you for the purpose of collective bargaining as requested in your letter of February 27.

We assume that we now having refused to meet with you for the purpose of collective bargaining, that you will undoubtedly proceed with a complaint to the National Labor Relations Board claiming that our refusal to bargain is an unfair labor practice. We will meet that issue before the Board. If the decision of the Board on such a complaint is against the L. A. Young Spring & Wire Corporation as it was in the above Representation Case, the Board will have

the right to petition the Circuit Court of Appeals for the enforcement of its order or we will have the right to appeal the order to the Circuit Court of Appeals.

. You, of course, appreciate, and if not, your attorney will advise you, that it is necessary to carry out the foregoing procedure before the matter can be taken either by your organization or by the company to the Circuit Court of Appeals. It is considered quite likely that the Packard Case may have been decided at least by the Circuit Court of Appeals before our case reaches that Court. We are

378 sure that you appreciate that the question involved in this case is of national importance and we will cooperate with you, and we are sure that you, in turn, will cooperate with us in taking the procedures above outlined to bring the matter to an issue before the Court and permit a final determination to be made at as early a date as is conveniently possible.

Very truly yours,

L. A. YOUNG SPRING & WIRE CORPORATION

C. M. YOUNG

C. M. YOUNG

Vice President

CNY/ag

Board Exhibit No. 6

379

WESTERN UNION

SY246 36=LOS ANGELES CALIF 18 439P

1946 APR 18 PM 7 37

EARL DURBIN=

9933 WALNUT AVE SOUTHGATE CALIF=

REPORT FOR WORK 8:00 AM FRIDAY APRIL 19TH. YOU WILL BE REQUESTED BY THE PICKETS NOT TO CROSS THEIR LINES BUT UNDER LAW YOU HAVE THE RIGHT TO ENTER THE PLANT. ENTER BY MAIN OFFICE DOOR=

L A YOUNG SPRING & WIRE CORP H J ECKERSON.

Board Exhibit No. 7380 **TO ALL—L. A. YOUNG OFFICE AND
SUPERVISION EMPLOYEES**

THE COMPANY HAS ADVISED THE UNION THAT THEY ARE REQUESTING ALL OFFICE AND SUPERVISION EMPLOYEES TO RETURN TO WORK.

We, your fellow workers, the production employees, again ask you not to cross our picket lines!

This difference with the Company is that the employees of L. A. Young are demanding a wage rate to maintain a decent standard of living comparable with other workers in this area.

OUR GAIN IS YOUR GAIN!

Maintain the respect of your fellow workers

BY RECOGNIZING OUR PICKET LINE.

Your fellow workers (the production employees) assure you that if you do not cross our picket line WE WILL NOT RETURN TO WORK UNLESS EACH AND EVERY ONE OF OUR FELLOW WORKERS, OFFICE, SUPERVISION and PRODUCTION EMPLOYEES, ARE RETURNED TO WORK STATUS QUO AS BEFORE OUR PICKET LINES WERE ESTABLISHED WEDNESDAY A.M., APRIL 17th.

ONE FOR ALL—ALL FOR ONE!

uopwa #9

Workers LA Young

Spring & Wire.

Board Exhibit No. 8

381 FOREMAN'S ASSOCIATION OF AMERICA

NATIONAL OFFICE

Phone CADillac 2828

515 Barlum Tower

Detroit 26, Michigan

President—Robert H. Keys

1st Vice-President—William Vallance

2nd Vice-President—W. Allen Nelson

Secretary-Treasurer—Elmer Reno

Membership Director—Harold M. Kelly

January 8th, 1946

NATIONAL OFFICERS

NATIONAL DIRECTORS

NATIONAL TRUSTEES

REGIONAL DIRECTORS

CHAPTER PRESIDENTS

CHAPTER SECRETARIES

NATIONAL EXECUTIVE BOARD MEMBERS

STATEMENT OF POLICY

Due to present and impending strikes of production and maintenance employees' unions in plants where supervisory employees are members of the FOREMAN'S ASSOCIATION OF AMERICA the National Executive Board at its regular meeting on January 6th, 1946, adopted the following policy:

A.—During an authorized strike by members of any production and maintenance employees' union the Chapter of the Foreman's Association representing the supervisory employees employed in the plant or plants involved shall through their duly authorized representatives confer with representatives of the company and of the union for the purpose of arranging for the protection and maintenance of property and equipment and to prevent the possibility of misunderstandings.

B.—During such a strike, should the company and the union by agreement permit all supervisory employees to

enter the plant that may do so, but members of the Foreman's Association shall not perform any work similar to that normally performed by the non-supervisory employees on strike, and they shall perform only their regular supervisory duties except as hereinafter provided.

C.—Should the striking union prevent supervisory employees from entering the plant to perform their regular work only or as provided for herein, there shall be no undue effort made by members of the Foreman's Association to enter the plant.

D.—Should the striking union provide maintenance and protective workers from its membership to prevent damage to property or equipment, members of the Foreman's Association who regularly supervise such maintenance or protective workers shall enter the plant and work in their regular capacity of supervising the work to be performed.

382 E.—Should the striking union for any reason fail to provide adequate maintenance and protective workers from its membership to maintain and protect property and equipment, members of the Foreman's Association in the plant at the time the strike starts shall perform such work as may be necessary to protect such property and equipment from damage. The duly authorized representatives of the Chapter representing the supervisory employees involved shall immediately notify representatives of the company and of the striking union of this condition. Upon failure to provide such maintenance and protective workers promptly the members of the Foreman's Association shall cease to perform such work unless it be mutually agreed by all parties to do otherwise.

F.—Should the striking union agree that all supervisory employees may enter the plant, and the company requires only part of them to enter, the duly authorized representatives of the Chapter shall immediately contact the representatives of the company to determine whether or not the company intends to compensate those not permitted to enter the plant for any time they may lose during the strike. If the company should refuse to agree to compensate those

supervisory employees not permitted to enter the plant the members of the Foreman's Association should not enter the plant.

G.—Should any member of the Foreman's Association be in a plant when a strike begins he shall finish his regular work day or if he enters the plant under the policies provided herein he shall work only his regular hours except in case of emergency as provided for in Section E hereof.

H.—Should emergencies arise that are not herein provided for, representatives of the Association shall contact his Regional Director, National Representative or the Office of the National President.

I.—Membership in the Foreman's Association provides a duty and obligation on each member to conduct himself at all times in accordance with the principles and policies of the Association.

OFFICE OF THE PRESIDENT
FOREMAN'S ASSOCIATION OF AMERICA

Board Exhibit No. 9.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 21-C-2716

L. A. YOUNG SPRING & WIRE CORPORATION

and

FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER No. 155

MOTION TO SUPPLEMENT THE RECORD

To: The Honorable National Labor Relations Board:

The hearing in this case having been held on May 15, 1946, before the Honorable Victor Hirschfield, Trial Examiner, and the Intermediate Report of said Trial Examiner, dated May 29, 1946, and based upon the record made at said hearing, having been filed with the National Labor Relations Board, and an order transferring this case to said Board, dated May 31, 1946, having been duly issued by said Board,

Comes now, James A. Cobey, Attorney for the National Labor Relations Board, and hereby moves the Honorable Board for permission to supplement the record for the purpose of the clarification and the completeness thereof, by adding to such record as Board's Exhibit No. 9, a Supplemental Stipulation, attached hereto, between L. A. Young Spring & Wire Corporation, Respondent herein, and the said James A. Cobey, relating to the issue as to whether or not Respondent is engaged in commerce within the meaning of the National Labor Relations Act, 49 Stat. 449.

In compliance with Article II, Section 34, of the National Labor Relations Board's Rules and Regulations,
384 Series 3 as amended, the original and three copies of this motion are submitted, together with proof of service of a true copy of said motion by registered mail upon each of the parties to this case, and proof of service of a true copy of said motion by manual tradition upon the Regional Director of said Board for its Twenty-first Region, who signed said Board's complaint in this case.

Respectfully submitted,

JAMES A. COBEY
JAMES A. COBEY, *Attorney*
National Labor Relations Board
Twenty-first Region
111 West 7th Street
Los Angeles, California

Los Angeles, California,
this 3rd day of July, 1946.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 21-C-2716

In the Matter of

L. A. YOUNG SPRING & WIRE CORPORATION
and

FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER No. 155
SUPPLEMENTAL STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between L. A. Young Spring & Wire Corporation, hereinafter called Respondent, through its undersigned general counsel, and James A. Cobey, Attorney, National Labor Relations Board, that:

1. Respondent's Los Angeles plant, located at 3200 East Slauson Avenue, Los Angeles, California, has been engaged since V-J day in a change-over of operations from war production to normal peace-time production. As a consequence of this change-over and the unsettled conditions prevailing generally and in the automotive and aircraft industries in particular, Respondent's post-war production at and sales from its Los Angeles plant thus far have been very much below the pre-war normal for that plant.

2. From October 1, 1945 to March 31, 1946, Respondent's sales of products manufactured at its Los Angeles plant to the below-named customers located within the State of California were as follows:

<i>Name of Customers</i>	<i>Dollar Volume</i>
Ford Motor Company	\$28,653.38
*National Automotive Fibres Co.	5,198.10
Lockheed Aircraft Corporation	10,674.39
North American Aviation, Inc.	18,457.61

3. During the fiscal year ending July 31, 1942, Respondent purchased for use by its Los Angeles plant raw

* Destined for ultimate use locally by Chrysler Corporation.

386 materials of the approximate value of \$285,451. Approximately 38% of these purchases originated outside the State of California.

4. During the fiscal year ending July 31, 1942, Respondent's sales of products manufactured at its Los Angeles plant amounted to approximately \$889,400 in value. Of these sales approximately 57% went to automotive customers, 20% to miscellaneous customers, and 23% to war uses. Less than 1% of these sales went to points located outside the State of California. The below-named customers located within the State of California took the following amounts:

<i>Name of Customer</i>	<i>Dollar Volume</i>
General Motors Corporation	\$233,777.
*National Automotive Fibres Co.	137,248.
Ford Motor Company	81,946.
Studebaker Corporation	54,876.

5. Respondent contemplates resumption as soon as practicable of peace-time operations at its Los Angeles plant on a scale and of a character comparable to the 1941 operations above described with the exception of the war production mentioned.

6. Respondent concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

L. A. YOUNG SPRING & WIRE CORPORATION
COOK, SMITH, JACOBS & BEAKE,
General Counsel

By BETHEL B. KELLY

JAMES A. COBEY,

JAMES A. COBEY, *Attorney*

NATIONAL LABOR RELATIONS BOARD

Dated at Los Angeles,
California this 1st day of
July, 1946.

* Destined for ultimate use locally by Chrysler Corporation.

REPLY BRIEF OF PETITIONER

**IN THE
UNITED STATES COURT OF APPEALS**

District of Columbia *United States Court of Appeals
for the District of Columbia*

—○—
No. 9397

FILED JUN 14 1947

—○—
L. A. YOUNG SPRING & WIRE CORPORATION
Petitioner,

Joseph W. Stewart
CLERK

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

—○—
**On Petition for Review of Order of the National Labor
Relations Board**

—○—
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**IN THE
UNITED STATES COURT OF APPEALS**

District of Columbia

No. 9397

L. A. YOUNG SPRING & WIRE CORPORATION
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

**On Petition for Review of Order of the National Labor
Relations Board**

**REPLY BRIEF OF PETITIONER,
L. A. YOUNG SPRING & WIRE CORPORATION**

This brief is in reply to the brief of the National Labor Relations Board filed herein. The jurisdictional statement and statement of case appear at pages 1-10 of petitioner's original brief filed herein.

SUMMARY OF ARGUMENT

The argument of the Board is devoted wholly to the proposition that the case of *Packard Motor Car Company v. National Relations Board*, 67 S. Ct. 789 "is dispositive of the question" presented here and that petitioners attempts to distinguish the Packard case are "procrustean" in character" and "patently self-refuting". Despite the Board *opinion*, because of *factual* differences and for the reasons hereinafter stated the Packard Motor Car Company case, *supra*, is inapplicable to the present case.

ARGUMENT

(1) Inapplicability of the Packard decision

A. Principle of Packard decision must be strictly limited.

Under the rule of stare decisis the Packard decision is a binding precedent *if, but only if* the facts there considered by the Supreme Court are in all essential respects the same as those presented to this court. The principle announced in the Packard case should be strictly limited to such facts as were there considered for the following reasons:

(1) The Packard case was decided by divided court in a five to four decision. In some jurisdictions such a decision is not binding as a precedent and in all jurisdictions such division is reason for strictly limiting the principle of the decision to such precise facts as were there considered.

(2) The Packard decision is but a single decision. Again, in some jurisdictions, a single decision is not a basis for the application of the doctrine of stare decisis, and in all jurisdictions the principle of such a decision is strictly limited to the facts considered.

(3) The Packard decision was decided on March 10, 1947, approximately two and a half months ago. It has not attained the dignity of an established principle upon which parties may be presumed to have relied which underlies the doctrine of stare decisis.

(4) The Packard decision was upon the facts there presented erroneously decided. The convincing dissent of Mr. Justice Douglas with whom the Chief Justice, Mr. Justice Burton and Mr. Justice Frankfurter concurred, is persuasive of this point.

(5) The facts considered by the Supreme Court in the Packard case are in *all essentials and crucial respects* different from the facts before this court, and that being so no principle is established applicable to this case.

B. The Factual Differences in Duties and Authority of Young and Packard Foremen

The Board has noted at pages 9 and 10 of its brief that in some relatively unimportant respects petitioners' foremen occupied a status similar to the status of the Packard foremen. The Board has failed to note the crucial respects in which the duties and authority of the Packard and Young foremen differed. The Board has omitted to note the significant finding of the Supreme Court concerning the authority and duties of the Packard foremen to the effect that "*hiring* is done by the labor relations department, as is the *discharging* and *laying-off* of employees, but the foremen are provided with forms and with detailed lists of penalties to be applied in case of violations of discipline, and initiate recommendations for *promotions, demotions, and discipline*" (emphasis added), nor has the Board noted in its brief that with respect to these crucial functions where the Packard foremen had no authority, or extremely limited authority, the Young foremen have plenary authority. The Board has likewise failed to point out its finding in the Packard case that the Packard foremen "*had no authority* to make decisions or take action on

such matters as the *discharge, transfer, laying-off, or re-classification* of the employees under his supervision," In matter of *Packard Motor Car Company*, 61 NLRB 4, and the differences in these respects in the authority of the Young foremen.

Most important of all for the purposes of this case the Board has failed to point out its findings in this case that the authority and duties of the Young foremen differed materially and for the purposes of this case critically from the Packard foremen. The board said in this regard:

"Each foreman is in *complete charge* of the operations of a department; his duties are *entirely supervisory* in nature. (footnote omitted) He has the power to *discharge* probationary employees in his department outright, to *discipline* or discharge regular subordinates subject to the provision of the collective bargaining contract covering rank and file workers, (footnote omitted) and to *promote employees* to better jobs within his department. The foreman regularly *rates his subordinates* on forms which are sent to the personnel department, and *represents the Company* in the initial stages of the *grievance procedure* affecting these employees. In addition, he *attends weekly foremen's meetings* at which production problems are discussed, (footnote omitted) participates in monthly safety forums, is *responsible for safety procedures* in his department, *initiates time studies* on new operations, and is consulted before production standards are finally set. * * * It is undoubtedly true, as the Company contends and the composite picture of the evidence reveals, that *the foremen here involved have greater discretion, authority and responsibility than the foremen who were the subject of the proceeding in the Packard case*" (198)* (emphasis added.)

* References are to the pages of the Joint Appendix.

1. *Hiring Employees*

Unlike the Packard foremen, who according to the Supreme Court did no *hiring*, the Young foremen in effect hired their own skilled employees (88) and with respect to unskilled employees, while the mechanical job of hiring was done by the personnel department so that if men were available in other departments they might be transferred to the requesting foreman's department, such hiring was done only upon the foreman's request for additional men (87-92, 137-145).

2. *Discharging Employees*

Unlike the Packard foremen, who the Supreme Court found could not *discharge* employees in their departments, the Young foremen could discharge probationary employees and could discharge other employees in their departments without the approval of higher authority subject only to the right of the rank and file union to object under the terms of its contract with the Company (58).

3. *Laying-Off Employees*

Unlike the Packard foremen who the Supreme Court found could not *lay-off* employees in their departments, the Young foremen determined who should be laid-off, and who should be retained in their departments (96).

4. *Disciplining Employees*

Unlike the Packard foremen who the Supreme Court found could only "initiate recommendatons" for "disci-

pline" and who were "provided with forms and with detailed lists of penalties to be applied in cases of violation of discipline" the Young foremen could discharge or otherwise discipline in their departments without approval of higher authority (58), and according to the testimony of Mr. Logan, the president of the Foremen's Association of America, at petitioner's plant, there was no list of rules or regulations specifying penalties for certain violations or discipline (106).

5. *Promoting Employees*

Unlike the Packard foremen who the Supreme Court found could only "initiate recommendations for *promotion*" the Young foremen were solely responsible to see that hourly rate and piece-rate employees met production standards (69), rated employees in their departments (108), could promote within their own departments and recommend promotions in other departments (58), and could recommend raises in wages, except to the extent limited by the War Labor Board which recommendations were, according to the president of the Foremen's union, followed in all cases in his department (125).

6. *Demoting Employees*

Unlike the Packard foremen who the Supreme Court found could only "initiate recommendations" for "*demotion*" the Young foremen had plenary power to demote employees in their departments (58, 96, 106, 107).

7. *Plenary Authority and Control in Department*

Unlike the Packard foremen who, according to the Board, were not "the kind of supervisors with whom we

were familiar in the early 1900's (61 NLRB 4), and who "were more the traffic-cop of industry than the independent foremen of the 1900's", (ibid), and who were "required to adhere to fixed patterns and procedures set by higher management" and who "were given ready made policies to execute and standard practices to observe in executing them" (ibid), and who "*had no authority to make decisions or take action on such matters as the discharge, transfer, lay-off or reclassification of the employees under his supervision*" (ibid), the Young foremen were in charge of their particular departments (58), were responsible for the production and operation of their departments (66-68), initiated time-studies on new operations (68), were responsible for keeping their departments in safe working order (69), were solely responsible for seeing that production standards were met (68), were managers of their particular departments in the same manner that the plant superintendent was manager of all departments (65), and had plenary authority as previously noted in the *hiring, discharging, laying-off, promoting, demoting, disciplining and classifying* of employees.

Mr. Logan, the president of the petitioning union, defined his functions and authority in his department by saying "*I had complete control of that department*" (105).

The Board itself has recognized in this case that with respect to the *crucial matter* of duties and authority in dealing with rank and file employees the Young foremen did not correspond to the Packard foremen, saying, "the foremen here involved have greater discretion, authority, and responsibility than the foremen who were the subject of the proceeding in the Packard case" (198).

II. The Young Foremen Are Not Employees Under The Act

A. Persons who hire, discharge, lay-off, promote, demote, discipline, classify and rate employees under their supervision are not "employees" under the National Labor Relations Act

All persons from the president to the janitor who are employed by a corporation and receive wages or salary from it are technically its "employees". The Supreme Court and the Board have recognized that some persons who are technically employees of a corporation are not "employees" under the National Labor Relations Act.

The Supreme Court said in the Packard case that "if a union of vice-presidents, presidents, or others of like relationship to a corporation comes here claiming rights under this Act, it will be time enough then to point out the obvious and relevant differences between the 1100 foremen of this company and corporation officers elected by the Board of Directors". The Board stated in matter of *Jones & McLaughlin Steel Corporation*, 66 NLRB 386, in finding that the foremen there involved were "employees" under the Act that the foremen "have not been directly consulted on the terms to be embodied in any agreement reached",¹ and that such foremen were not "policy making officials". The Board thus inferred that "policy making officials" who, of course, are technically employees of a company, would not be "employees" under the Act.

¹ The Board was referring to the collective bargaining agreement with the rank and file union. In this connection the Young foremen were consulted on the terms to be sought in the collective bargaining agreement with the rank and file union (71, 72).

Neither the majority of the Supreme Court in the Packard case nor the Board has ever undertaken a critical analysis of this question in the light of the purposes of the Act. The principal purpose of the Act as set forth in Section 1 is to encourage "the practice and procedure of *collective bargaining*". Congress, of course, contemplated two parties to the "collective bargaining"—employers and employees;—and in Section 2 (2) defined the two parties as the "employer" including "any person acting in the interest of an employer, directly or indirectly"; and, in Section 2 (3), the "employee" as including "any employee". Logically those persons are "*employers*" who act "*in the interest of the employer*" in carrying out the purpose of the Act—"collective bargaining" with "*employees*"—and are not themselves "employees". The Act does not remotely suggest a dual status. "Collective bargaining" under the Act, while not defined in the Act, has a well recognized meaning in industry and is not confined to "policy making" as the Board infers.² Neither is the line of demarcation between "employers" and "employees" to be drawn as the Supreme Court suggests on the basis of titles such as "vice president", "president", or "others of like relationship".

The only logical line of demarcation that can be drawn under the Act is the line recognized by Justice Douglas in his dissent in the Packard case who said "But it is not the label which is important; *it is whether the employees in*

² "Collective bargaining" is largely the day-to-day settlement of controversies over *hiring, discharging, promoting, demoting, laying-off, disciplining, classification* of employees and like disputes. In a statement to the Senate Investigating Committee under date of March 9, 1945 the Automotive Council for War Production listed 118 strikes resulting in work stoppages in the Detroit area in December 1944 and January 1945. 114 of these 118 disputes that had been negotiated through "collective bargaining" related to such matters as promotions, demotions, discharges, etc., and only 4 related to wages and hours which are usually considered in the making of a collective bargaining contract. Had these disputes occurred at the Young Company the Young foremen would have acted for the petitioner in the "collective bargaining" regarding them.

question represent or act for management on labor policy matters. Thus, one might be a supervisory employee without representing management in those respects and those who are called foreman may perform duties not substantially different from those of skilled laborers”.

The Board and a majority of the Supreme Court found that the Packard foremen had no authority to take action on collective bargaining matters such as *hiring, discharging, laying-off, promoting, demoting, classifying and disciplining* of “employees” under their supervision. As we have pointed out above, the Young foremen had plenary authority with regard to these essential collective bargaining functions of *hiring, discharging, laying-off, promoting, demoting, classifying and disciplining* “employees”. When persons have this plenary authority with regard to the essential functions of “collective bargaining” even the Supreme Court majority could not logically decline to recognize them as “employers” rather than “employees” under the Act. This being so, the Packard decision is inapplicable and for the reasons here stated and stated in the brief heretofore filed in this case, petitioner’s foremen are not “employees” under the Act. The unfair labor practice complaint and the order certifying the petitioning union in this case should for these simple and obvious reasons be set aside and dismissed.

B. The fallacy that a person can be both an “employer” and an “employee” under the Act

Foremen acting “in the interest of” the employer in collective bargaining under the Act have uniformly been held to be “employers” under the Act. The acts of foremen

such as the Young foremen have uniformly been held to be the acts of the employer for the purposes of the Act even though not expressly authorized. *H. J. Heinz Company v. NLRB*, 311 US 514,518, and cases cited therein. The holding of the Board in this case requires a holding that such foremen occupy a dual status under the Act being at one and the same time "employers" and "employees". Aside from the fact that the definitions of "employer" and "employee", read in the context of the Act and the legislative history of the Act, contain not the slightest suggestion that Congress ever considered that a person occupied such a dual status under the Act, as Justice Douglas observed in his dissent in the Packard case "an act of a foreman, if attributed to the management, constitutes an unfair labor practice; the same act may be part of the foreman's activity as an employee. In that event the employer can only interfere at his peril".³

Certainly as Justice Douglas further observed in his dissent "the failure of Congress to formulate a policy respecting the peculiar and special problems of foremen suggests an absence of purpose to bring them under the Act."

³ For example an employer called recently and stated that two of his general foremen were soliciting departmental foremen and assistant foremen to join a chapter of the Foremen's Association of America. The employer requested advice as to what action he should take. Under the Board and Court decisions I was compelled to confess that I did not know what he should do, for if he required the general foremen to desist from their soliciting he would be considered as engaging in an unfair labor practice by interfering with their rights as "employees" under the Act, while if he failed to require them to desist, their acts, being attributable to him, would amount to an unfair labor practice in interfering with the rights of the departmental foremen and assistant foremen to select a representative of their own choosing. Such an intolerable result could not have been intended by Congress and a simple and reasonable construction of the Act would avoid this result.

C. The other rules of construction

In view of the fact that the term "employee" when examined in the context of the Act is not ambiguous there is no need to resort to other rules of statutory construction to ascertain Congress' intent. If there were an ambiguity and resort was had to other rules of construction it becomes crystal clear that Congress never intended the foremen here to be considered "employees" under the Act. These rules of construction and their application are discussed in petitioner's brief and in the dissent of Mr. Justice Douglas in the Packard case to which petitioner respectfully refers the court. From that discussion it is apparent that the evil at which the Act was aimed was the refusal of industry to recognize the collective bargaining rights of "workingmen", not foremen such as those here making in excess of \$6,000.00 per year; that Congress was not concerned with problems of supervisory personnel, such as the foremen here; that Congress has uniformly used appropriate language where it desired to include persons such as the foremen here as "employees" when that term has been used in similar legislation; and that the revolutionary effect upon our industrial society resulting from compelled recognition of foremen's unions and recent legislative acts by Congress together indicate that Congress never intended foremen such as petitioner's foremen to be considered "employees" under the Act.

III. The Affiliation of The Petitioning Union Representing The Rank and File Employees of Petitioner

The Supreme Court in the Packard case accepted the Board's finding that the union selected by the Packard foremen was an "*unaffiliated* organization which represents supervisory employees only" (67 S. Ct. 789.), The Board has made a similar finding with respect to the union selected by the Young foremen (39, 46).

The 275 rank and file employees of petitioner are represented by Local 809 of the UAW-CIO for collective bargaining purposes (58-60). Under the contract between the Company and the CIO union the foremen and assistant foremen act for the Company in settling grievances with the CIO and their decisions on grievances and on matters of discipline, even to discharge, are final (58-60, 105-107).

The Board's witnesses in this case have denied that the foremen's union is affiliated with any other union. While there is an absence of direct evidence of affiliation the record here proves conclusively that there is an *affiliation in fact* between the foremen's union and the rank and file union that is just as binding as would be any formal pact. Every critical and important act of the foremen's union in this case and the National policy of the Foremen's Association of America (220-222) is eloquently persuasive of the *fact* of affiliation between petitioning union and the rank and file union. The record here establishes that the foremen's union officers talked to leaders of the rank and file union about their plans for organization (113). The president of the foremen's union testified that in the event of a strike of the rank and file union he would not attempt to fill the strikers jobs with other men (117), that he would

in any event comply "in all respects" with the rules and regulations of his National association (118-119). When a strike of the rank and file union took place at petitioner's plant on April 17, 1946 the foremen, members of petitioning union, though informed of the projected strike a week before it occurred, did not advise petitioner of the fact, and conferred with the rank and file union leaders regarding the strike (154), refused to enter petitioner's plant to determine whether the plant facilities they were employed to protect were being protected, counselled with the rank and file union leaders in the course of the strike, and stated that their actions were in accordance with a national policy of their association which requires that they not work or enter upon the employer's premises during such a strike, except with the permission of the rank and file union (172, 220-222), and although requested by telegrams directed to each individual member of the petitioning union on April 18, 1946 (218), the members of the petitioning union had not returned to work at the time the hearing of this case was concluded on May 15, 1946 (149, 151). During the course of the strike the foremen union members congregated across the road from petitioner's plant and conferred with the rank and file union leaders (156, 158, 168, 170).

The acts of cooperation between the petitioning union and the rank and file union here are far more convincing evidence of actual affiliation than are denials of petitioning union leaders. This is especially so when we view these denials in the light of the admission by the president of the petitioning union that he was hesitant in his testimony because "I don't want to give any testimony that may be held against me or the union" (135).

The dissenting opinion of Board member Reilly in this case is persuasive that the fact of affiliation between the

petitioning union and rank and file union is established by this record and that because of such affiliation the Board abused its discretion in certifying the petitioning union as a collective bargaining representative of the Young foremen (49-51).

CONCLUSION

It is respectfully submitted that the Packard decision is inapplicable to the facts before this Court, that the Young foremen are not "employees" under the National Labor Relations Act, that there is an absence of substantial evidence to support the Board's finding that the petitioning union here is an unaffiliated labor organization, and for these reasons the certification of the petitioning union as collective bargaining representative of petitioner's foremen should be set aside and dismissed and the unfair labor practice complaint of the Board should be set aside and dismissed.

Respectfully submitted,

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Spring & Wire Corporation.

GRANT L. COOK,
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Of Counsel.

Dated at Detroit, Michigan,
June 4, 1947.

